STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with correction	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Laveda Womack,

Petitioner,

vs.

NO: 12 WC 39749

14IWCC0391

Casey's General Store,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, extent of temporary total disability, medical expenses and prospective medical care and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 7, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $234.85 per week for a period of 22 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

14IWCC0391

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner all reasonable and necessary medical expenses as identified in Px5 under §8(a) of the Act, subject to the Medical Fee Schedule under §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit in the amount of $5,994.69 under §8(j) of the Act; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury. The Commission notes that Respondent paid $939.40 in PPD advance.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $4,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 2 9 2014
MB/maw
O:4/24/14
43

Mario Basurto

Stephen J. Mathis

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

WOMACK, LAVEDA
Employee/Petitioner

Case# **12WC039749**
12WC039750

CASEY'S GENERAL STORE
Employer/Respondent

14IWCC0391

On 6/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1239 KOLKER LAW OFFICES PC
JASON R CARAWAY
9423 W MAIN ST
BELLEVILLE, IL 62223

0299 KEEFE & DEPAULI PC
NEIL GIFFHORN
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Laveda Womack
Employee/Petitioner

v.

Casey's General Store
Employer/Respondent

Case # 12 WC 39749

Consolidated cases: 12 WC 39750

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on April 24, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☒ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, October 24, 2012, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did exist between Petitioner and Respondent.

On this date, Petitioner did sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned $12,217.92; the average weekly wage was $234.85.

On the date of accident, Petitioner was 50 years of age, married with 0 dependent child(ren).

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $939.40 for other benefits (permanent partial disability advance), for a total credit of $939.40.

Respondent is entitled to a credit of $5,994.69 under Section 8(j) of the Act.

ORDER

Respondent shall pay for reasonable and necessary medical services as identified in Petitioner's Exhibit 5, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of $5,994.69 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $234.85 per week for 22 weeks commencing October 25, 2012, through March 27, 2013, as provided in Section 8(b) of the Act.

Petitioner's petition for prospective medical treatment as recommended by Dr. Gornet is denied.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

William R. Gallagher, Arbitrator
ICArbDec19(b)

May 31, 2013
Date

JUN - 7 2013

Findings of Fact

Petitioner filed two Applications for Adjustment of Claim which alleged that she sustained accidental injuries arising out of and in the course of her employment for Respondent. In case number 12 WC 39750, Petitioner alleged that she sustained a repetitive trauma injury to the back and body as a whole with a manifestation date of October 19, 2012. In case number 12 WC 39749, Petitioner alleged that she sustained an injury to the back and body as a whole while lifting a soda crate on October 24, 2012. Respondent disputed liability in respect to both cases on the basis of accident and causal relationship. At trial, Petitioner's counsel made a motion to consolidate these two cases. Respondent's counsel had no objection and the Arbitrator granted the motion.

In regard to the repetitive trauma claim (12 WC 39750) no evidence was tendered at trial that Petitioner sustained a repetitive trauma back injury that manifested itself on October 19, 2012, or at any other time.

In regard to the claim involving the accident of October 24, 2012, (12 WC 39749) Petitioner testified that she had worked for Respondent for approximately four months primarily as a cook/cashier. One of Petitioner's job duties was to stock the cooler with juices, water, soda, etc. The beverages were kept in crates that, when full, weighed 40 to 50 pounds. On October 24, 2012, Petitioner was in the process of picking up a crate of soda and she felt a "pop" in her back which caused her to fall to her knees. Petitioner stated that this caused an immediate onset of pain in her low back that went into her right hip. Petitioner testified that she reported the accident to the assistant manager, an individual by the name of Eve, and that an accident report was completed.

Petitioner sought medical treatment from Dr. David Walls, her family physician, on October 25 and November 1, 2012. Dr. Walls' records were received into evidence at trial and his hand written record of October 25, 2012, indicated that Petitioner was being seen for a work injury. The typewritten portion of his record for that date confirmed that Petitioner injured her back at work while stocking a cooler. Petitioner had severe complaints of low back pain with radiation into the right flank. On examination, straight leg raising was positive on the right side and Dr. Walls prescribed some medication. When Dr. Walls saw Petitioner on November 1, 2012, her symptoms had not improved and she was also complaining of numbness, spasms and weakness of the right leg.

Prior to this accident, Petitioner had a significant back injury which was also work-related. For this prior injury, Petitioner's primary treating physician was Dr. Don Kovalsky. On October 7, 2002, Dr. Kovalsky performed back surgery which consisted of a discectomy and fusion with metal hardware and bone grafting at the L4-L5 level. Petitioner recovered from that surgery and was released by Dr. Kovalsky to return to work without restrictions on July 9, 2003. Petitioner testified that her prior back problems were on the left side and that after she had been released by Dr. Kovalsky, she was able to work without restrictions and that prior to October 24, 2012, her back was "fine."

Dr. Walls saw Petitioner on September 18, 2012, for a number of other health issues; however, a medical history questionnaire was completed on that date which noted that Petitioner had a history of back surgery and back pain. This portion of the record is hand written and is not clear whether the back symptoms that were referenced were in the past or more current.

Petitioner then sought medical treatment from Dr. Matthew Gornet, an orthopedic surgeon, who had previously treated her husband. Petitioner saw Dr. Gornet on November 6, 2012, and informed him of her sustaining the injury at work on October 24, 2012, while lifting a crate full of soda. Petitioner also informed Dr. Gornet of having undergone a prior back fusion. Petitioner complained of back and right leg pain as well as right leg numbness and weakness. Dr. Gornet opined that Petitioner's symptoms were related to the accident of October 24, 2012, and he authorized her to remain off work. He also ordered an MRI scan. An MRI was performed on December 20, 2012, which revealed a central disc herniation at L5-S1. Dr. Gornet recommended physical therapy, but his records stated that the insurer declined to authorize it. Dr. Gornet's alternative recommendation was that Petitioner undergo some steroid injections.

Petitioner was seen by Dr. Kaylea Boutwell on January 7, January 22 and February 4, 2013, and she received epidural steroid injections on each of those visits. Petitioner testified that she did not experience any significant relief of her symptoms following the injections. Dr. Gornet saw Petitioner on February 18, 2013, and Petitioner informed him that she had both injections and physical therapy but still had low back pain with symptoms in the right buttocks, hip and foot. At that time, Dr. Gornet recommended that Petitioner had a CT discogram at L3-L4 and L5-S1 and opined that Petitioner was still disabled from work.

At the direction of the Respondent, Petitioner was examined by Dr. David Lange, an orthopedic surgeon, on February 18, 2013. Dr. Lange obtained a history from Petitioner, reviewed medical treatment records provided to him, reviewed the MRI and examined the Petitioner. Petitioner informed Dr. Lange of the accident of October 24, 2012, as well as her prior spine surgery. Petitioner complained of low back pain with tingling in the right leg and swelling "all over." Dr. Lange observed that Petitioner had a limp on the left side which was opposite the side that she stated she was experiencing tingling. Dr. Lange also noted that conducting a clinical examination of the Petitioner was difficult because she complained of severe pain with even the slightest touch. Further, range of motion testing was not possible because of Petitioner's extreme complaints. Dr. Lange reviewed the MRI scan and opined that the L5-S1 level had a very shallow contained disc herniation.

Dr. Lange opined that Petitioner's subjective complaints of low back pain were out of proportion to her objective clinical findings, the right lower extremity symptoms were not consistent with S1 radiculopathy and there were significant signs of symptom magnification or Waddell's signs. Dr. Lange did agree that Petitioner did sustain a work-related injury on October 24, 2012, but was unable to define how much of her complaints were physiological v. psychological. In regard to treatment, Dr. Lange opined that a short period of physical therapy might be beneficial but that additional epidural injections or a discogram was not indicated. Given the lack of positive objective findings and multiple Waddell's signs, and the fact that the MRI indicated that the L5-S1 disc had more protrusion on the left than on the right side, Dr. Lange opined that Petitioner was a "horrible candidate" for surgery. Dr. Lange opined that Petitioner could return to work

with restrictions including a 10 pound lifting maximum and the use of appropriate body mechanics.

Petitioner returned to work for Respondent on March 25, 2013, and ran the cash register for approximately two hours and then went to the ER of Red Bud Regional Hospital because of severe low back pain. On examination at the ER, it was noted that Petitioner had moderate tenderness to palpation on the left paralumbar area and she was diagnosed with an acute lumbar strain and directed to see Dr. Thomas Soma for follow up treatment. She was authorized to return to work on March 28, 2013.

At trial Petitioner testified she had significant complaints of low back pain that never went away, that simple activities of daily living are virtually impossible and that she can barely walk. Petitioner appeared at trial using a cane to ambulate; however, she agreed that no physician had ever prescribed or recommended the use of a cane. Other than Petitioner's attempt to return to work on March 25, 2013, she has not worked at all since October 24, 2012.

Conclusions of Law

In regard to disputed issues (C) and (D) the Arbitrator makes the following conclusions of law:

In regard to the repetitive trauma claim with a manifestation date of October 19, 2012, (12 WC 39750) the Arbitrator concludes that Petitioner failed to prove that she sustained a repetitive trauma back injury because no evidence was tendered supporting such a claim.

In regard to the claim involving the accident of October 24, 2012, (12 WC 39749) the Arbitrator concludes that Petitioner sustained an accidental injury arising out of and in the course of her employment for Respondent on that date.

In support of this conclusion the Arbitrator notes the following:

Petitioner testified that on October 24, 2012, she was in the process of picking up a crate of soda and that she felt a "pop" in her low back, that she reported it to the assistant manager named Eve and that an accident report was prepared. Respondent tendered no evidence to the contrary.

Further, the history of the work-related accident of October 24, 2012, was consistently reported to Petitioner's treating physicians, Dr. Walls and Dr. Gornet and to Respondent's Section 12 examiner, Dr. Lange.

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being is causally related to the accident of October 24, 2012, to the extent that Petitioner sustained a low back strain.

In support of this conclusion the Arbitrator notes the following:

Petitioner testified that she previously had low back surgery in 2002 and informed both Dr. Gornet and Dr. Lange of same. Petitioner recovered from that prior surgery and was able to work without restrictions and had no significant back complaints prior to October 24, 2012. The medical records of Dr. Walls of September 18, 2012, refer to Petitioner's history of back surgery/pain but does not emphatically state that Petitioner had back complaints at that specific point in time.

Both Dr. Gornet and Dr. Lange opined that Petitioner had sustained a back injury on October 24, 2012, with Dr. Gornet also opining that Petitioner's symptoms were related to that accident. Dr. Lange does not dispute the causal relationship of Petitioner's back injury to the accident of October 24, 2012; however, he does dispute the severity of the injury.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner in connection with the accident of October 24, 2012, was reasonable and necessary and that Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 5, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of $5,994.69 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is not entitled to the prospective medical treatment recommended by Dr. Gornet in connection with the accident of October 24, 2012.

In support of this conclusion the Arbitrator notes the following:

When Petitioner was examined by Dr. Gornet on February 18, 2013, his medical record did not describe any findings on clinical examination and it erroneously stated that Petitioner had received physical therapy. (According to his records, Petitioner informed Dr. Gornet that she had received physical; however, there were no physical therapy records tendered.) Dr. Lange's report of that same date noted that because of Petitioner's extreme complaints, a clinical examination was extremely difficult; however, to the extent that Dr. Lange was able to examine the Petitioner, Petitioner's findings on examination were out of proportion to her complaints and she did exhibit symptom magnification or Waddell signs.

Dr. Lange opined that while a brief period of physical therapy might be indicated, that additional treatment was not indicated, especially any further surgical procedures because Petitioner was not a good surgical candidate.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is entitled to temporary total disability benefits of 22 weeks commencing October 25, 2012, through March 27, 2013, in connection with the accident of October 24, 2012.

In support of this conclusion the Arbitrator notes the following:

Petitioner was under active medical treatment and authorized to be off work for the preceding period of time. Petitioner was examined by Dr. Lange and authorized to return to work with restrictions and Respondent provided work to Petitioner on March 25, 2013. Petitioner claimed that she was only able to work for two hours as a cashier and went to the ER. Thereafter, she was released return to work on March 28, 2013, but did not do so.

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with correction	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Laveda Womack,

Petitioner,

vs.

NO: 12 WC 39750
14IWCC0392

Casey's General Store,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, extent of temporary total disability, medical expenses and prospective medical care and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 7, 2013 is hereby affirmed and adopted.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 29 2014
MB/maw
O:4/24/14
43

Mario Basurto

Stephen J. Mathis

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

WOMACK, LAVEDA
Employee/Petitioner

Case# **12WC039750**

12WC039749

CASEY'S GENERAL STORE
Employer/Respondent

14IWCC0392

On 6/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1239 KOLKER LAW OFFICES PC
JASON R CARAWAY
9423 W MAIN ST
BELLEVILLE, IL 62223

0299 KEEFE & DEPAULI PC
NEIL GIFFHORN
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Laveda Womack
Employee/Petitioner

v.

Casey's General Store
Employer/Respondent

Case # 12 WC 39750

Consolidated cases: 12 WC 39749

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on April 24, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☒ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident (manifestation), October 19, 2012, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did exist between Petitioner and Respondent.

On this date, Petitioner did not sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is not causally related to the accident.

In the year preceding the injury, Petitioner earned $12,217.92; the average weekly wage was $234.85.

On the date of accident, Petitioner was 50 years of age, married with 0 dependent child(ren).

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00.

Respondent is entitled to a credit of $0.00 under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's conclusions of law attached hereto, claim for compensation is denied.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

William R. Gallagher, Arbitrator

May 31, 2013
Date

ICArbDec19(b)

JUN - 7 2013

Findings of Fact

Petitioner filed two Applications for Adjustment of Claim which alleged that she sustained accidental injuries arising out of and in the course of her employment for Respondent. In case number 12 WC 39750, Petitioner alleged that she sustained a repetitive trauma injury to the back and body as a whole with a manifestation date of October 19, 2012. In case number 12 WC 39749, Petitioner alleged that she sustained an injury to the back and body as a whole while lifting a soda crate on October 24, 2012. Respondent disputed liability in respect to both cases on the basis of accident and causal relationship. At trial, Petitioner's counsel made a motion to consolidate these two cases. Respondent's counsel had no objection and the Arbitrator granted the motion.

In regard to the repetitive trauma claim (12 WC 39750) no evidence was tendered at trial that Petitioner sustained a repetitive trauma back injury that manifested itself on October 19, 2012, or at any other time.

In regard to the claim involving the accident of October 24, 2012, (12 WC 39749) Petitioner testified that she had worked for Respondent for approximately four months primarily as a cook/cashier. One of Petitioner's job duties was to stock the cooler with juices, water, soda, etc. The beverages were kept in crates that, when full, weighed 40 to 50 pounds. On October 24, 2012, Petitioner was in the process of picking up a crate of soda and she felt a "pop" in her back which caused her to fall to her knees. Petitioner stated that this caused an immediate onset of pain in her low back that went into her right hip. Petitioner testified that she reported the accident to the assistant manager, an individual by the name of Eve, and that an accident report was completed.

Petitioner sought medical treatment from Dr. David Walls, her family physician, on October 25 and November 1, 2012. Dr. Walls' records were received into evidence at trial and his hand written record of October 25, 2012, indicated that Petitioner was being seen for a work injury. The typewritten portion of his record for that date confirmed that Petitioner injured her back at work while stocking a cooler. Petitioner had severe complaints of low back pain with radiation into the right flank. On examination, straight leg raising was positive on the right side and Dr. Walls prescribed some medication. When Dr. Walls saw Petitioner on November 1, 2012, her symptoms had not improved and she was also complaining of numbness, spasms and weakness of the right leg.

Prior to this accident, Petitioner had a significant back injury which was also work-related. For this prior injury, Petitioner's primary treating physician was Dr. Don Kovalsky. On October 7, 2002, Dr. Kovalsky performed back surgery which consisted of a discectomy and fusion with metal hardware and bone grafting at the L4-L5 level. Petitioner recovered from that surgery and was released by Dr. Kovalsky to return to work without restrictions on July 9, 2003. Petitioner testified that her prior back problems were on the left side and that after she had been released by Dr. Kovalsky, she was able to work without restrictions and that prior to October 24, 2012, her back was "fine."

Dr. Walls saw Petitioner on September 18, 2012, for a number of other health issues; however, a medical history questionnaire was completed on that date which noted that Petitioner had a history of back surgery and back pain. This portion of the record is hand written and is not clear whether the back symptoms that were referenced were in the past or more current.

Petitioner then sought medical treatment from Dr. Matthew Gornet, an orthopedic surgeon, who had previously treated her husband. Petitioner saw Dr. Gornet on November 6, 2012, and informed him of her sustaining the injury at work on October 24, 2012, while lifting a crate full of soda. Petitioner also informed Dr. Gornet of having undergone a prior back fusion. Petitioner complained of back and right leg pain as well as right leg numbness and weakness. Dr. Gornet opined that Petitioner's symptoms were related to the accident of October 24, 2012, and he authorized her to remain off work. He also ordered an MRI scan. An MRI was performed on December 20, 2012, which revealed a central disc herniation at L5-S1. Dr. Gornet recommended physical therapy, but his records stated that the insurer declined to authorize it. Dr. Gornet's alternative recommendation was that Petitioner undergo some steroid injections.

Petitioner was seen by Dr. Kaylea Boutwell on January 7, January 22 and February 4, 2013, and she received epidural steroid injections on each of those visits. Petitioner testified that she did not experience any significant relief of her symptoms following the injections. Dr. Gornet saw Petitioner on February 18, 2013, and Petitioner informed him that she had both injections and physical therapy but still had low back pain with symptoms in the right buttocks, hip and foot. At that time, Dr. Gornet recommended that Petitioner had a CT discogram at L3-L4 and L5-S1 and opined that Petitioner was still disabled from work.

At the direction of the Respondent, Petitioner was examined by Dr. David Lange, an orthopedic surgeon, on February 18, 2013. Dr. Lange obtained a history from Petitioner, reviewed medical treatment records provided to him, reviewed the MRI and examined the Petitioner. Petitioner informed Dr. Lange of the accident of October 24, 2012, as well as her prior spine surgery. Petitioner complained of low back pain with tingling in the right leg and swelling "all over." Dr. Lange observed that Petitioner had a limp on the left side which was opposite the side that she stated she was experiencing tingling. Dr. Lange also noted that conducting a clinical examination of the Petitioner was difficult because she complained of severe pain with even the slightest touch. Further, range of motion testing was not possible because of Petitioner's extreme complaints. Dr. Lange reviewed the MRI scan and opined that the L5-S1 level had a very shallow contained disc herniation.

Dr. Lange opined that Petitioner's subjective complaints of low back pain were out of proportion to her objective clinical findings, the right lower extremity symptoms were not consistent with S1 radiculopathy and there were significant signs of symptom magnification or Waddell's signs. Dr. Lange did agree that Petitioner did sustain a work-related injury on October 24, 2012, but was unable to define how much of her complaints were physiological v. psychological. In regard to treatment, Dr. Lange opined that a short period of physical therapy might be beneficial but that additional epidural injections or a discogram was not indicated. Given the lack of positive objective findings and multiple Waddell's signs, and the fact that the MRI indicated that the L5-S1 disc had more protrusion on the left than on the right side, Dr. Lange opined that Petitioner was a "horrible candidate" for surgery. Dr. Lange opined that Petitioner could return to work

with restrictions including a 10 pound lifting maximum and the use of appropriate body mechanics.

Petitioner returned to work for Respondent on March 25, 2013, and ran the cash register for approximately two hours and then went to the ER of Red Bud Regional Hospital because of severe low back pain. On examination at the ER, it was noted that Petitioner had moderate tenderness to palpation on the left paralumbar area and she was diagnosed with an acute lumbar strain and directed to see Dr. Thomas Soma for follow up treatment. She was authorized to return to work on March 28, 2013.

At trial Petitioner testified she had significant complaints of low back pain that never went away, that simple activities of daily living are virtually impossible and that she can barely walk. Petitioner appeared at trial using a cane to ambulate; however, she agreed that no physician had ever prescribed or recommended the use of a cane. Other than Petitioner's attempt to return to work on March 25, 2013, she has not worked at all since October 24, 2012.

Conclusions of Law

In regard to disputed issues (C) and (D) the Arbitrator makes the following conclusions of law:

In regard to the repetitive trauma claim with a manifestation date of October 19, 2012, (12 WC 39750) the Arbitrator concludes that Petitioner failed to prove that she sustained a repetitive trauma back injury because no evidence was tendered supporting such a claim.

In regard to the claim involving the accident of October 24, 2012, (12 WC 39749) the Arbitrator concludes that Petitioner sustained an accidental injury arising out of and in the course of her employment for Respondent on that date.

In support of this conclusion the Arbitrator notes the following:

Petitioner testified that on October 24, 2012, she was in the process of picking up a crate of soda and that she felt a "pop" in her low back, that she reported it to the assistant manager named Eve and that an accident report was prepared. Respondent tendered no evidence to the contrary.

Further, the history of the work-related accident of October 24, 2012, was consistently reported to Petitioner's treating physicians, Dr. Walls and Dr. Gornet and to Respondent's Section 12 examiner, Dr. Lange.

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being is causally related to the accident of October 24, 2012, to the extent that Petitioner sustained a low back strain.

In support of this conclusion the Arbitrator notes the following:

Petitioner testified that she previously had low back surgery in 2002 and informed both Dr. Gornet and Dr. Lange of same. Petitioner recovered from that prior surgery and was able to work without restrictions and had no significant back complaints prior to October 24, 2012. The medical records of Dr. Walls of September 18, 2012, refer to Petitioner's history of back surgery/pain but does not emphatically state that Petitioner had back complaints at that specific point in time.

Both Dr. Gornet and Dr. Lange opined that Petitioner had sustained a back injury on October 24, 2012, with Dr. Gornet also opining that Petitioner's symptoms were related to that accident. Dr. Lange does not dispute the causal relationship of Petitioner's back injury to the accident of October 24, 2012; however, he does dispute the severity of the injury.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner in connection with the accident of October 24, 2012, was reasonable and necessary and that Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 5, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of $5,994.69 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is not entitled to the prospective medical treatment recommended by Dr. Gornet in connection with the accident of October 24, 2012.

In support of this conclusion the Arbitrator notes the following:

When Petitioner was examined by Dr. Gornet on February 18, 2013, his medical record did not describe any findings on clinical examination and it erroneously stated that Petitioner had received physical therapy. (According to his records, Petitioner informed Dr. Gornet that she had received physical; however, there were no physical therapy records tendered.) Dr. Lange's report of that same date noted that because of Petitioner's extreme complaints, a clinical examination was extremely difficult; however, to the extent that Dr. Lange was able to examine the Petitioner, Petitioner's findings on examination were out of proportion to her complaints and she did exhibit symptom magnification or Waddell signs.

Dr. Lange opined that while a brief period of physical therapy might be indicated, that additional treatment was not indicated, especially any further surgical procedures because Petitioner was not a good surgical candidate.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is entitled to temporary total disability benefits of 22 weeks commencing October 25, 2012, through March 27, 2013, in connection with the accident of October 24, 2012.

In support of this conclusion the Arbitrator notes the following:

Petitioner was under active medical treatment and authorized to be off work for the preceding period of time. Petitioner was examined by Dr. Lange and authorized to return to work with restrictions and Respondent provided work to Petitioner on March 25, 2013. Petitioner claimed that she was only able to work for two hours as a cashier and went to the ER. Thereafter, she was released return to work on March 28, 2013, but did not do so.

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Martha Guzman,
Petitioner,
vs.

14IWCC0393
NO: 12 WC 31087

Hoya Free-Form Co,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, temporary total disability, notice and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 18, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 30 2014
KWL/vf
O-5/20/14
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0393

GUZMAN, MARTHA
Employee/Petitioner

Case# **12WC031087**

HOYA FREE-FORM CO
Employer/Respondent

On 11/18/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1067 ANKIN LAW OFFICE LLC
JOSHUA RUDOLFI
162 W GRAND AVE SUITE 1810
CHICAGO, IL 60654

0532 HOLECEK & ASSOCIATES
JEFF GOLDBERG
161 N CLARK ST SUITE 800
CHICAGO, IL 60601

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0393

MARTHA GUZMAN
Employee/Petitioner

v.

HOYA FREE-FORM CO.
Employer/Respondent

Case # **12** WC **31087**

Consolidated cases: -----

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **10/8/2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the claimed date of accident, **2/3/2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment. Based on this finding, the Arbitrator views the remaining disputed issues as moot. The Arbitrator makes no findings as to those issues.

In the year preceding the injury, Petitioner earned **$19,240.00**; the average weekly wage was **$370.00**.

On the claimed date of accident, Petitioner was **44** years of age, ***married*** with **1** dependent child.

Respondent shall be given a credit of **$0.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$0.00**.

Respondent is entitled to a credit of **$0.00** under Section 8(j) of the Act.

ORDERS

For the reasons set forth in the attached credibility assessment and conclusions of law, the Arbitrator finds that Petitioner lacked credibility and failed to prove a work accident of February 3, 2012. The Arbitrator views the remaining disputed issues as moot and makes no findings as to those issues. Compensation is denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Molly C Mason
Signature of Arbitrator

11/15/13
Date

ICArbDec19(b)

NOV 18 2013

Martha Guzman v. Hoya Free-Form Company
12 WC 31087

Arbitrator's Findings of Fact

Petitioner testified through a Spanish-speaking interpreter. She testified she previously worked at Respondent, cleaning and transporting eyeglass lenses. She lifted and carried 12 to 20 boxes of lenses at a time about every 5 or 10 minutes throughout each workday. She worked 8 hours per day, 5 days per week. T. 16-17.

Petitioner's original Application, filed on September 10, 2012, alleges a low back injury of February 21, 2012. Arb Exh 2. On July 22, 2013, Petitioner filed an Amended Application changing the date of accident to February 3, 2012. Arb Exh 3. T. 8-9.

Petitioner testified that, on February 3, 2012, she was lifting boxes of lenses when she experienced cramping in her lower back. She felt as if something had moved inside her back. She continued working. She did not report any injury that day because she thought her back pain would go away. The pain persisted, however. T. 17-19.

On February 7, 2012, Petitioner saw Dr. Becerra, her personal care physician. Records in evidence reflect that Petitioner had previously seen Dr. Becerra on various occasions in 2011 for general health conditions, including diabetes and abdominal pain. PX 2.

Dr. Becerra's note of February 7, 2012 reflects that Petitioner complained of "1 week h/o low back pain on right side associated with increased urinary frequency and urgency" and some low abdominal pain emanating from the back. The note contains no mention of work or a work accident. On examination, Dr. Becerra noted tenderness to palpation of the low abdomen and questionably positive CVA tenderness vs. lumbar muscle tenderness." The doctor also noted negative straight leg raising. She diagnosed an "unspecified backache" and a urinary tract infection. She recommended a urinalysis and urine cultures. She prescribed Bactrim, as she had at a previous visit in December 2011. She instructed Petitioner to return to her in two weeks. PX 2.

Petitioner testified she continued working after seeing Dr. Becerra. On February 9, 2012, a Thursday, she went to the Emergency Room at St. Anthony Hospital. T. 9. The Emergency Room records (PX 3) reflect that Petitioner complained of "pain RUQ radiating to the back and nausea x 5 days." The records also reflect that Petitioner described the onset of her pain as gradual. The records contain no mention of work or a work accident. On examination, the Emergency Room physician, Dr. Langridge, noted "tenderness confined to the abdominal wall in the region of the RUQ." Dr. Langridge noted no tenderness to palpation of the lower back. An abdominal ultrasound was negative for gallstones. Dr. Langridge suspected abdominal wall muscle-related pain because she was able to "palpate the tender muscle on examination" and the pain worsened when Petitioner sat up from a lying position. Dr.

Langridge prescribed Norco and instructed Petitioner to follow up with her personal care physician in two days.

Petitioner testified she called Maria, Respondent's human resources representative, on February 9, 2012 and reported the February 3, 2012 accident to her. She is familiar with Maria's voice and Maria identified herself during the conversation. T. 19-21.

Petitioner returned to Dr. Becerra on February 21, 2012 (T. 21), with the doctor noting an Emergency Room visit of February 13, 2012 and a CT scan of the abdomen and pelvis. [Petitioner did not offer into evidence any Emergency Room records dated February 13, 2012 or any CT scan report.] Dr. Becerra noted that the CT scan showed "non-obstructing calculi on the kidney." On examination, Dr. Becerra noted tenderness to palpation of the right lumbar paraspinals and right sacroiliac joint. She diagnosed a lumbar strain. She administered an injection of Kenalog and prescribed physical therapy. Her note contains no mention of work or a work accident.

Petitioner testified she continued working during this period. T. 21. She returned to Dr. Becerra on March 13, 2012 (T. 21) and complained of neck and back pain. Dr. Becerra noted that Petitioner had undergone a cervical laminectomy in 2010. [Records in PX 4 show that Petitioner was involved in an automobile accident on July 28, 2009 and underwent care with Drs. Becerra and Kranzler thereafter.] She also noted that Petitioner described her neck pain as right-sided and as having started a week earlier. Petitioner described her low back pain as right-sided and worse with movement. Dr. Becerra noted that Petitioner "constructs eye lenses and is standing for most of the day." She described Petitioner's job as repetitive and involving "moving from right to left with each lens rapidly." On examination, she noted tenderness to palpation to the right side of the neck and diminished lumbar lordosis. She recommended neck and back therapy and Flexeril. She "continued" a 10-pound lifting restriction. [There is no evidence of Dr. Becerra having previously imposed this restriction.]

Petitioner testified she continued working throughout this period. She began a course of physical therapy at St. Anthony Hospital on March 16, 2012. T. 22. The therapist who evaluated Petitioner on that date recorded the following history:

> "She has back pain on her right side from the top down, rated at 6/10. She went to the emergency room and the doctor told her that her muscles were inflamed. She cleans the lenses in a factory so she is twisting often. **She has no overt trauma** but she does stand all day and rotates side to side. She does some lifting (15 or a little more lbs). The time she carries boxes is when she feels the pressure in her back. She now has a lifting and carrying restriction at work. She can't lay down. It is better in sitting she still feels pressure. Hot showers help her to relax."

(emphasis added). On April 23, 2012, a different therapist noted a new onset of bilateral scapular and cervical pain. PX 3.

Petitioner testified that physical therapy did not help her. T. 22.

On May 8, 2012, Petitioner returned to Dr. Becerra. The doctor's history of that date states:

> "Martha Guzman is a 44-year-old female who presents for evaluation of recurrent neck pain. Has had pt but still getting pain and also on lower back. Worse at work where she washes eyeglasses, separates them, collects them and moves them – pushing them constantly."

On examination, Dr. Becerra noted decreased head rotation secondary to muscle pain and pain on palpation of the right paraspinal lumbar muscles. She diagnosed cervicalgia and lumbago. She prescribed a Medrol Dose-Pak, Flexeril, Ibuprofen and continued therapy. She recommended that Petitioner exercise four or more times per week. She instructed Petitioner to return in two weeks. PX 2.

Petitioner returned to Dr. Becerra the next day, May 9, 2012, and complained of worsening low back pain radiating to her right leg. Petitioner indicated she had been unable to work that morning due to this pain. Petitioner described having difficulty pushing a pedal she was required to push. Dr. Becerra took Petitioner off work (T. 22) and ordered a "repeat" lumbar spine MRI. [There is no evidence indicating the doctor had previously ordered an MRI.]

The MRI, performed without contrast on May 16, 2012 (T. 22-23), was unremarkable. PX 3.

On May 21, 2012, Petitioner returned to Dr. Becerra and reported slight improvement. Petitioner indicated it was still painful for her to bend or twist. The doctor noted the negative MRI results. The doctor described straight leg raising as negative. She recommended Naprelan and Flexeril, along with aerobic exercise classes. She instructed Petitioner to return in two weeks.

On May 30, 2012, Petitioner underwent another physical therapy evaluation at St. Anthony Hospital. The evaluating therapist noted that Petitioner complained only of neck pain and described her low back as "fine" now that she was off work.

On June 5, 2012, Petitioner returned to Dr. Becerra. Petitioner reported some improvement secondary to physical therapy but indicated she had experienced pain on trunk twisting the previous weekend. On examination, Dr. Becerra noted muscle spasm of the

lumbar region. She recommended continued therapy and aerobic exercise. Petitioner testified that Dr. Becerra referred her to Dr. Kranzler at this appointment. T. 23. PX 2.

On June 19, 2012, Petitioner was discharged from mid-thoracic and cervical spine therapy at St. Anthony Hospital so that she could begin work conditioning at a different facility on Kedzie. PX 3.

On July 10, 2012, Petitioner saw Dr. Kranzler, the neurosurgeon who had operated on her cervical spine two years earlier. Petitioner testified she saw Dr. Kranzler at Dr. Becerra's referral.

Dr. Kranzler's note of July 10, 2012 contains no mention of a February 3, 2012 work accident. The note reflects that Petitioner "does a great deal of lifting and pushing heavy items" at work and "began to have pain in her back" at work on April 9, 2012. The note also reflects that Petitioner "has been off work since May and is on disability at this time."

Dr. Kranzler indicated that Petitioner complained of pain in her low back, right hip, right leg and right shoulder as well as "numbness of her right and left toes after physical therapy."

On examination, Dr. Kranzler noted that Petitioner was able to walk well, "including on her toes and heels" and bent to ankle length. He also noted spasm on the right side of the back, straight leg raising to 80 degrees bilaterally and intact sensation.

Dr. Kranzler reviewed the report of the May 16, 2012 lumbar spine MRI. He noted that the MRI scan was not available. He diagnosed lumbar radiculopathy and ordered a DSSEP of the lumbar area.

Dr. Kranzler's records contain a lengthy patient information sheet dated July 10, 2012. This sheet reflects that Petitioner attributed her symptoms to a work injury of April 9, 2012 and had been off work since May 9, 2012. PX 4.

Documents in PX 4 reflect that Petitioner requested an FMLA leave from Respondent on July 11, 2012, citing a serious health condition.

On July 25, 2012, Petitioner underwent the recommended DSSEP testing, which showed a 1.0 delay on the left and a 1.2 delay on the right at L5. PX 4.

On July 27, 2012, Petitioner returned to Dr. Becerra and complained of mid-chest pain with swallowing. Dr. Becerra recommended X-rays of the ribs and clavicle. PX 2.

Petitioner returned to Dr. Kranzler on July 31, 2012. On that date, Petitioner complained of low back pain radiating down both legs, right worse than left, as well as numbness and tingling in the big and second toes. Dr. Kranzler reviewed the MRI film and the

DSSEP results. He interpreted the MRI as showing a bulge at L4-L5. He advised Petitioner to undergo surgery but noted she "opted to try low dose oral steroids."

On August 1, 2012, Dr. Kranzler completed and signed a CIGNA group insurance "medical request form" indicating he had recommended surgery but Petitioner had not yet decided whether she wanted to pursue this. The doctor also indicated he would find it difficult to specify work restrictions without a functional capacity evaluation. He described Petitioner's condition as work-related. PX 4.

Petitioner testified that, on August 10, 2012, Dr. Becerra instructed her to remain off work pending the recommended surgery. T. 26.

On August 16, 2012, Sibyl Baily, Respondent's regional human resources coordinator, wrote to Petitioner, confirming her eligibility for 12 weeks of FMLA leave and asking her to complete and submit various documents. PX 4.

On August 22, 2012, Dr. Kranzler completed a certification form in support of Petitioner's FMLA claim. This form reflects that Petitioner's job involved lifting "more or less 5 lbs., standing and walking 90% of her day." Dr. Kranzler indicated Petitioner required care and was not able to perform these duties. PX 4.

Records in PX 4 reflect that Dr. Kranzler scheduled Petitioner to undergo a lumbar hemilaminectomy on October 26, 2012 but that the surgery did not proceed.

Petitioner testified she returned to Dr. Kranzler on April 23, 2013, at which time the doctor again recommended surgery and directed her to remain off work. T. 26. A form in PX 4 reflects that Dr. Kranzler instructed Petitioner to remain off work on April 23, 2013.

A bill in PX 1 reflects that Petitioner saw Dr. Becerra for "spasmodic torticollis" on April 29, 2013 but the records in evidence do not include a treatment note bearing that date.

Petitioner testified she has not yet undergone the recommended surgery. She will undergo the surgery if it is awarded. T. 26-27.

Petitioner testified she had no lower back complaints and underwent no lower back treatment prior to February 3, 2012. T. 27-28. She started working for Respondent on July 7, 2011 and had no difficulty performing her duties until February 3, 2012. T. 28. She is still experiencing lower back pain. This pain prevents her from working, cleaning, sweeping and walking for long periods. Standing alleviates the pain a little. T. 28-29. She has received no benefits since she has been off work. Public Aid/Medicare paid her medical bills. She wants to undergo the recommended surgery to eliminate the pain. T. 29-30.

Under cross-examination, Petitioner testified she stood at a table while cleaning lenses. She would clean the lenses by hand and then place them in a machine for further processing. T.

31. The lenses were in plastic boxes or trays. The trays had drainage holes. T. 32. A single tray weighed only a couple of pounds. The lenses were also light in weight but she had to carry a large stack of trays from her work area to a co-worker. T. 33, 37. The stack was about 2 ½ feet high. T. 35. She was required to clean 12 trays of lenses every 5 minutes. She typically carried 12 trays at a time. T. 36.

Petitioner testified the accident of February 3, 2012 occurred around 1 PM. She could not recall if it occurred before or after lunch. She had worked more than four hours before the accident occurred. T. 37. She did not report the accident to anyone that day. On February 9, 2012, she went to the Emergency Room by car. Her husband drove her to the hospital. T. 38. At the hospital, she did not complain only of stomach problems. T. 38. She complained of back pain and a doctor examined her back. T. 38. She underwent an MRI at the hospital because the doctor suspected she had a gall bladder problem. T. 39. When she left the hospital, she was told to stay off work for three or four days. She was told she had an "inflamed muscle from work." T. 39. She returned to work the Monday after February 9, 2012. When she resumed working, she did not perform any lifting. She only cleaned lenses. She continued doing this until May 9, 2012.

Petitioner testified she has seen Dr. Becerra for about 10 years. She has a lot of confidence in Dr. Becerra. T. 39-40. On February 21, 2012 she told Dr. Becerra about her back pain and her lifting-related duties. Dr. Becerra indicated her problem was work-related. T. 40-41. After February 2012, there was never a time when her lower back pain disappeared. T. 41. She did not tell Dr. Becerra she experienced a gradual onset of lower back pain. It was when she picked up boxes on February 3, 2012 that her lower back pain began. T. 42. Dr. Becerra recommended an MRI and later told her the MRI was normal. When she saw Dr. Becerra after her visit to the Emergency Room, the doctor imposed a 10-pound lifting restriction. After February 9, 2012, she performed no lifting at work. She only cleaned the lenses. T. 44.

Petitioner testified she told Dr. Kranzler she lifted heavy items at work. She did not tell him she was injured while lifting in April. T. 45-46. She told Dr. Kranzler she was on light duty and was no longer lifting trays. T. 46.

Petitioner testified that Miguel Duran was her supervisor. Duran is familiar with the kind of duties she performed. Duran was not always at work, however. He was sometimes on vacation. He is the person who set her schedule. T. 46-47. She told Duran about the difficulty she had lifting items. She did not tell Duran she experienced lower back pain while lifting trays. T. 47.

On redirect, Petitioner testified she typically carried 12 trays at a time but sometimes carried more. Each tray weighed a few pounds. She does not know the exact weight. T. 48. The stack she carried could have weighed 20 to 25 pounds. T. 48-49. She continued to experience lower back pain after she resumed working following her Emergency Room visit. Even though the work she performed after that visit consisted solely of cleaning lenses, she still had to stand all day while doing this. She had difficulty standing for long periods due to pain in

her back and right leg. She did not have this pain before the accident. T. 51-52. She currently takes Vicodin. Dr. Kranzler prescribed this medication. She takes the medication when her pain is intolerable. T. 54.

Under re-cross, Petitioner testified she told Dr. Becerra about all of her job duties, not just the lifting. T. 55.

Miguel Duran testified on behalf of Respondent. Duran testified he has worked for Respondent for 21 years. He has been a supervisor in the "surface department" for the last 16 to 17 years. T. 60. He supervises about fifteen people. T. 60. Respondent operates an optical lab that fabricates, coats and tints lenses for eyeglasses. T. 59, 61.

Duran testified he hired and supervised Petitioner. T. 62. Petitioner worked at the "CREST" machine at the washing station. Her job involved "de-blocking," or tapping, lenses to remove alloy blocks, rinsing the lenses at a sink, positioning the lenses in "very thin metal baskets" and then putting the filled baskets into machines for further cleaning and specialized ionized washing. T. 65-68, 71. A filled basket weighed about one pound. T. 76. A robotic arm lifted each basket in and out of each machine. T. 73. Petitioner worked at a table that was about 4 ½ feet high. T. 66. She moved from left to right, down a line, while performing her tasks. The baskets were put into trays and the trays were generally stacked twelve-high. T. 79. A stack of twelve trays was about 3 ½ feet tall. T. 79. Initially, Petitioner had to carry stacks of trays of lenses, sometimes only 2 to 3 feet and sometimes as far as 30 feet. T. 82. She did not always carry the same number of trays. She made about five trips per hour. T. 84.

Duran testified that Petitioner reported to him directly and that he worked alongside her in the lab. T. 87. If Petitioner had sustained a work accident, he would have been the person to whom she would have reported that accident. T. 87. He instructed Petitioner about this in various safety meetings. T. 87-88. Petitioner did not report any work injury to him and he did not observe her having any difficulty lifting the trays. At some point, probably beyond the initial 90-day probationary period, Petitioner told him she had a back problem but she did not link this problem to any particular cause. T. 89. If Petitioner had told him this before her 90-day probationary period ended, he would have told her to get documentation from a doctor. He only allows one absence during the probationary period. T. 90-91. Once the 90-day period ended, Petitioner would have had three personal days she could have used. T. 91. Once she had used up those three days, she would have been required to produce a doctor's note. T. 91. Petitioner was not subject to any restrictions until she brought him a doctor's note setting forth a lifting restriction. T. 92-93. He accommodated this restriction by having another employee, known as a "floater," lift and carry trays for Petitioner. T. 93. He did not see Petitioner perform any lifting after she brought in the doctor's note. He was not involved in the events that occurred on Petitioner's last day of work. T. 94-95.

Under cross-examination, Duran testified that Petitioner was required to carry some trays only a short distance. She had to carry other trays about 30 feet to the "back coating" area. She carried between 6 and 10 trays at a time to that area. T. 96-97. He cannot recall

when Petitioner gave him the doctor's note. T. 97. He did not complete any accident report in connection with Petitioner. If anyone completed a report, it would have been someone in the human resources department. T. 98-99. If an employee under his supervision had a work accident, he completed a report and gave it to his supervisor, Phillip Griest. T. 99-100. He usually discussed a worker's restrictions with Griest. Griest had a tendency to keep restricted employees off work while his own tendency was to keep those employees working, albeit within their restrictions. T. 100-101. He would have to refer to paperwork in Griest's office in order to ascertain when Petitioner began performing light duty and when she last worked for Respondent. T. 103. He knows Petitioner took some personal days before her last day of work. T. 104.

On redirect, Duran reiterated that neither Petitioner nor the notes indicated that the lifting restrictions stemmed from a work accident or work activities. T. 106.

In addition to the treatment records previously summarized, Petitioner offered into evidence a Public Aid lien reflecting payments made toward Petitioner's medical expenses. PX 1.

Respondent did not offer any documentary evidence.

Arbitrator's Credibility Assessment

At the hearing, Petitioner came across as a thoughtful, sincere individual but there were significant inconsistencies between her testimony and her medical records. Those inconsistencies call Petitioner's credibility into question.

Petitioner emphatically denied having any lower back problems before her claimed work accident of February 3, 2012 but Dr. Kranzler's records show she complained of lower back and left leg pain as well as neck and arm pain in November of 2009, following her automobile accident. DSSEP testing performed by Dr. Chhabria on November 24, 2009 showed evidence of conduction delay on the left at S1. On December 10, 2009, Dr. Kranzler diagnosed lumbar as well as cervical radiculopathy. The doctor's operative report of April 14, 2010 reflects that Petitioner "also has lumbar symptoms, low back and left leg pain with radiation down to her ankles." Following the surgery, Dr. Kranzler again noted left leg complaints on June 8, 2010. PX 4.

Petitioner linked the onset of her low back problems to a specific lifting incident of February 3, 2012 but none of her records contain any mention of such an incident.

Did Petitioner sustain an accident arising out of and in the course of her employment on February 3, 2012?

At the outset, the Arbitrator notes that Petitioner did not allege repetitive trauma. Rather, she insisted that all of her lower back problems started after she lifted a stack of trays at work on the afternoon of February 3, 2012.

The Arbitrator finds that Petitioner failed to prove a work accident of February 3, 2012. The St. Anthony Hospital Emergency Room records of February 9, 2012 reflect that Petitioner complained of nausea and right upper quadrant pain "radiating to the back." The records do not mention work or a back injury. PX 3. It appears Petitioner underwent scans at a different Emergency Room on February 13, 2012 but no records dated February 13, 2012 are in evidence. Dr. Becerra's office notes of February 9 and 21, 2012 reflect complaints of low back pain but contain no mention of work, let alone a specific work accident. PX 2. A therapy note dated March 21, 2012 reflects that Petitioner denied any overt back trauma. PX 3. Dr. Kranzler's records mention a work accident but one that occurred on April 9, 2012, not February 3, 2012. Petitioner denied telling Dr. Kranzler she was injured in April but a handwritten patient information sheet in the doctor's chart reflects that Petitioner's symptoms began on April 9, 2012, secondary to a work injury. PX 4.

Having found that Petitioner failed to prove a work accident of February 3, 2012, the Arbitrator views the remaining disputed issues as moot. Compensation is denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stephen Bradshaw,

Petitioner,

14IWCC0394

vs.

NO: 10 WC 31840

State of Illinois/Menard Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, medical expenses, and permanent disability, hereby reverses the Arbitrator's Decision and finds that Petitioner failed to prove that he sustained accidental injuries arising out of and in the course of his employment on July 20, 2010.

Evidentiary Rulings

The Commission notes that at the arbitration hearing before Arbitrator Gallagher on June 11, 2013, the Petitioner offered and the Arbitrator entered into evidence PX1 through PX17 and PX19 through PX22. (T.15) Petitioner also offered what were marked as Petitioner's Exhibits 18 and 23. Petitioner's Exhibit 18 was a report authored by Zachary Weiss (hereinafter "Weiss"), a college student hired by Petitioner's counsel to review Dr. Sudekum's reports. Petitioner's exhibit 23 was Weiss' evidence deposition. Both were objected to by Respondent on the basis of relevancy. Respondent's counsel noted that both exhibits are from an unrelated case, Richard Brueggemann v. State of Illinois/Menard Correctional Center, 10WC472 & 12WC40657 & 12WC42758. The Arbitrator reserved ruling on the admissibility of the exhibits and explained that he would enter his ruling "at the time I enter my decision." (T.10-12, 15-16)

The Commission finds that, ultimately, PX18 and PX23 were never admitted into

evidence and, as such, are not properly part of the record. Despite mentioning and relying on the exhibits in his decision, the Arbitrator failed to admit them into evidence. The Commission finds that if the Arbitrator had admitted them into evidence, it would have been error to do so as they are irrelevant and inadmissible.

The Commission notes that PX18 and PX23 are irrelevant to the matter at hand. The exhibits are from a previously tried case, Richard Brueggemann v. Menard Correctional Center, and at best they are hearsay documents. The exhibits simply point out general similarities in Dr. Sudekum's reports. In his reports, Dr. Sudekum provides general and generic information regarding upper extremity neuropathies in order to explain the conditions and causes for the conditions.

This is to be expected not just in Dr. Sudekum's reports, but all medical reports outlining conditions and the causes of those conditions. The generic information and testimony provided is appropriate and, as previously explained, expected. However, the Commission notes that when Dr. Sudekum issues findings and opinions regarding a specific claimant, the information he provides is detailed and specific and deals solely with the claimant in question. The Commission finds nothing improper in providing a combination of general information regarding conditions and the causes of those conditions along with detailed and specific findings and opinions regarding a claimant. This would be true for any physician reporting on a patient's condition.

The Commission notes that the Arbitrator allowed the deposition taken of Dr. Sudekum for James Bauersachs v. State of Illinois/Menard Correctional Center, 10WC27503 (PX15), and the exhibits from that evidence deposition, consisting of invoices for Section 12 examinations conducted for employees of Respondent with workers' compensation claims and a prior arbitration decision, Richard Kirkover v. State of Illinois/Menard Correctional Center, 10WC33480, into evidence (PX17). The deposition and the exhibits from that deposition deal with cases completely separate and unrelated to the case at bar. The testimony and evidence from these exhibits are irrelevant to the case at bar and should not have been admitted.

Finally, the Commission notes that under Supreme Court Rule 206, a party serving notice of deposition intending to record the deponent's testimony by use of an audio-visual recording device, must advise the parties in that notice of his intent to use the audio-visual recording device. Ill. S. Ct. R. 206(a)(2) (2013). The rule further explains that:

> "[i]f any party intends to record the testimony of the witness by use of an audio-visual recording device, notice of that intent must likewise be served upon all other parties a reasonable time in advance. Such notice shall contain the name of the recording-device operator." Ill. S. Ct. R. 206(a)(2) (2013).

During Dr. Sudekum's April 26, 2012 evidence deposition, Respondent's counsel explained that she received a telephone call from Petitioner's counsel the day before advising that Dr. Sudekum's cross-examination would be videotaped. (PX19) Respondent's counsel also noted

that Petitioner's counsel brought his own videographer. Respondent's counsel objected on the basis of notice and explained that the deposition "is my deposition, I noticed it. It was not noticed for a video deposition." (PX19) Though inartful, the objection was proper and should have been sustained. Petitioner's counsel clearly failed to meet the requirements of Rule 206 regarding the use of audio-visual recording devices at depositions. Therefore, Dr. Sudekum's cross-examination from the April 26, 2012 evidence deposition is stricken from the record.

Accident

Regarding the merits of the case at bar, after a complete review of the record, the Commission finds that Petitioner failed to establish that his bilateral upper extremity conditions are a result of or were aggravated by his work for Respondent.

On August 6, 1998, Petitioner saw his primary care physician, Dr. Krieg, regarding right elbow pain "on and off for the past couple of months." (RX6) Dr. Krieg diagnosed Petitioner as having tendinitis. The next time Petitioner complained of elbow pain was on October 18, 2001, when Petitioner complained of left elbow pain "for the last couple of months." (RX6) Dr. Krieg noted that Petitioner "sanded for an extended period of time" while working for Respondent. At this point, Petitioner was working on the paint crew. (T.35) Dr. Krieg diagnosed Petitioner as having tendonitis. In 2003, Dr. Krieg removed a nodule from Petitioner's right elbow, after which Dr. Krieg noted that Petitioner had "good range of motion with minimal tenderness." (RX6)

On August 21, 2007, Petitioner saw Dr. Krieg following an injury to his right fifth finger at work. (RX6) The Commission notes that the record does not indicate that Petitioner was having problems with his wrists or elbows at that time. Petitioner was then working as a maintenance craftsman for Respondent. (T.24, 40) On October 4, 2007, during a follow up visit for his finger injury, Petitioner reported to Dr. Krieg that his "grip strength is not quite what it was....He did a lot of sanding the other day and some pain and tenderness in the outer aspect of his right elbow. Some pain down into the forearm and up into the upper arm." Dr. Krieg diagnosed Petitioner as having right tennis elbow and took Petitioner off work for a couple of days. (RX6) On November 27, 2007, Dr. Krieg noted that Petitioner's "pain and other things still occur with activity. Now he has got some stiffness of the elbow. He did have improvement with Cho-Pat strap. He is able to do his regular job." (RX6) Dr. Krieg ordered physical therapy and told Petitioner to return if he had more problems. Petitioner did not return to Dr. Krieg until February 28, 2008, when he again complained of right elbow pain "on and off for several months. At times he feels there is a loose body present that causes sudden discomfort. If he pushes on it, it gets better." (RX6) Dr. Krieg diagnosed Petitioner as having chronic right elbow pain.

In September 2008, Petitioner transferred to the supply supervisor position. (T.24) In this position, Petitioner worked in the commissary, supply warehouse, and handled the property control assignment. (T.24,47-48,50) Petitioner testified that the new position would be "better" for his health. (T.46) Petitioner admitted that during the property control assignment, when he drove trucks, or was the clothing officer, he did not do any bar rapping or open doors or gates with Folger Adam keys in his "personal area." (T.89-90)

The Commission notes that when Petitioner next contacted Dr. Krieg, he had been working as a supply supervisor; a job Petitioner defined as less strenuous, for two years. (RX6) Petitioner called Dr. Krieg on June 21, 2010, at his wife's urging, to ask him to schedule an EMG/NCV study. The phone call notation indicates that Petitioner stated that his condition might be "workers' comp." On July 20, 2010, Petitioner underwent his first EMG/NCV study, the result of which showed "bilateral carpal tunnel syndrome more pronounced on the right than the left" and "mild compression at Guyon's canal" on the right. (PX3) Petitioner filled out injury reports at work on August 12, 2010. (PX10, RX2, RX3) The CMS Initial Workers' Compensation Medical Report indicates that Petitioner had numbness in both hands for one year. (PX10, RX3) Petitioner indicated in the forms that his upper extremity injuries were due to repetitive trauma at work. (PX10,RX2,RX3)

On November 8, 2010, Petitioner saw Dr. Brown. (PX4) Petitioner provided Dr. Brown his job history with Respondent, explaining that he spent three years as a "craftsman where he would drywall, concrete, build walls, use hand tools and paint. For the past two years he's driven a truck two days a week. He will also type 89% of the time, three days a week. He will scan items, turn keys about thirty times an hour. [Petitioner] explains to me that he had about a year history of gradual, progressive numbness and tingling in both his hands including his little and ring fingers associated with medial elbow pain." (PX4) Dr. Brown ordered a new EMG/NCV study and found that "[b]ased on [Petitioner's] job description and duration of exposure to those activities over the past twenty-seven and a half years I do believe his work at Menard would be considered in part an aggravating factor in the need for further evaluation and treatment for both carpal tunnel syndrome and cubital tunnel syndrome."

An EMG/NCV study, conducted that same day, showed "significant moderate sensory motor median neuropathy across the right carpal tunnel. There is milder sensory motor medial neuropathy across the left carpal tunnel. There is mild demyelinative ulnar neuropathy across the right elbow. There is moderate demyelinative ulnar neuropathy across the left elbow." (PX5) After reviewing the new study, Dr. Brown diagnosed Petitioner as having bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. (PX4) Ultimately, Dr. Brown found that Petitioner had chronic compression neuropathies, had failed to respond to conservative treatment, and that Petitioner was a candidate for surgical decompression. (PX11-pgs.17-18) Petitioner retired in July 2011. (T.22)

On December 26, 2011, Respondent's independent medical examiner, Dr. Sudekum, reviewed Petitioner's medical records, diagnostic exams, and the multiple job analysis reports, job descriptions, and videos of the positions held by Petitioner while working for Respondent, except the property control assignment. (RX7-ERX2) Dr. Sudekum opined that Petitioner's "job duties as a Correctional Officer and/or Maintenance Craftsman at Menard did not cause or aggravate carpal and/or cubital tunnel syndrome or affect his need to undergo evaluation and/or treatment for those conditions." He stated: "It is my opinion that the commissary 'check out' position which may be assigned to the Supply Supervisor I and II's, if performed on a prolonged and sustained basis could aggravate carpal tunnel syndrome. I do not feel that the commissary 'check out' position would cause or aggravate a cubital tunnel syndrome or ulnar neuropathy at the elbows since the performance of this job there does not involve any direct contact or irritation

14IWCC0394

to the ulnar nerve in the medial elbow region."

After reviewing the property control and officers clothing position job descriptions, Dr. Sudekum issued an addendum on January 6, 2012. He noted that: "[Petitioner] first complained of symptoms 'carpal tunnel symptoms' in July 2010 while he was employed in the Property Control area as a Correctional Supply Supervisor II. The above job description does not indicate or suggest that the Property Control position involves any sustained or strenuous manual activity that would normally be associated with causation and/or aggravation of carpal and/or cubital tunnel syndrome. It is my opinion...that the job activities performed by Corrections Supply Supervisors II's assigned to the 'Property Control and Officers Clothing' area, would not serve to cause or aggravate carpal or cubital tunnel syndrome and I do not feel that [Petitioner's] work activities, as a Supply Supervisor II in the Property Control Area, would have served to cause or aggravate possible carpal and/or cubital tunnel syndrome." (RX7-ERX3)

On April 11, 2012, Petitioner underwent a third EMG/NCV study which showed mild bilateral median neuropathy at the wrist and mild left ulnar neuropathy at the elbow. (PX7) Dr. Young reviewed the study and diagnosed Petitioner as having bilateral carpal tunnel and cubital tunnel syndromes. (PX6) Dr. Young explained that Petitioner "more than likely has a false negative on the right and he does have bilateral ulnar nerve entrapment as well as median nerve entrapment." Dr. Young ordered a carpal tunnel release and nerve transposition. Petitioner underwent carpal tunnel and ulnar nerve transpositions on April 25, 2012 and July 27, 2012, respectively. (PX6,PX8)

First, the Commission notes that the record establishes that Petitioner has had continuing elbow problems since 1998. The Commission finds the appearance of Petitioner's bilateral carpal tunnel syndrome two years after he has been working a less strenuous and more varied positions with Respondent indicative of the lack of connection between Petitioner's upper extremity problems and his work for Respondent. Even more instructive and persuasive to the Commission is the fact that Petitioner's symptoms of carpal tunnel syndrome appear about two years after he stopped performing the two tasks generally linked to carpal tunnel syndrome, those being bar rapping and using Folger Adam keys. (T.89-90) The Commission notes that while all the job descriptions and videos provided indicate that Petitioner's duties as a supply supervisor I and II were hand intensive, they also indicate and establish that the duties are also varied in nature. Petitioner, according to his testimony, was constantly working between the property control assignment, the commissary, and the warehouse and his tasks in each of those assignments were, again varied in nature. (T.86-92)

The Commission further notes that Dr. Brown, in finding that Petitioner's upper extremity conditions are related to his employment with Respondent, considered the totality of Petitioner's time with Respondent, 26 years, and considered Petitioner's bar rapping, key turning, and the gripping and pulling of doors to be instrumental in aggravating Petitioner's carpal tunnel syndrome and cubital tunnel syndrome. (PX11-pgs.23-26, 28) In regards to repetitive traumas, the court in *A.C. & S. v. Industrial Commission*, 304 Ill. App. 3d 875, 879 (1999), stated that:

"An employee who suffers a gradual injury due to a repetitive

> trauma is eligible for benefits under the Act, but he must meet the same standard of proof as a petitioner alleging a single, definable accident. Proof that the relationship of employer and employee existed at the time of the accident is one of the elements of an award under the Act. The date of the accidental injury in a repetitive trauma case is the date on which the injury 'manifests itself.'" (Interval citations omitted.)

"'Manifests itself' means the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 531(1987). Furthermore, "[t]here must be a showing that the injury is work related and not the result of a normal degenerative aging process. *Belwood*, 115 Ill. 2d at 530.

As previously noted, the medical records indicate that Petitioner's elbow issues started in 1998. In August 1998, Petitioner told Dr. Krieg he had increased elbow pain when held "one of his children's hands and twists sort of funny he experiences some increased pain in the elbow area." (RX6) While Petitioner in later visits mentioned sanding at work when feeling elbow symptoms, by November 27, 2007, Petitioner was having elbow pain "and other things...with activity." The Commission notes that the evidence indicates that the worsening of Petitioner's elbow conditions are the "result of the normal degenerative aging process" and not attributable to his work for Respondent. As for Petitioner's wrist conditions, the Commission notes, as mentioned above, that Petitioner's symptoms occurred about two years after he stopped performing the type of work generally associated with the cause of or aggravation of carpal tunnel syndrome (i.e. sanding, working with vibratory tools, bar rapping, etc.)

As explained by Dr. Sudekum in his January 6, 2012 addendum report, "[Petitioner] first complained of symptoms 'carpal tunnel symptoms' in July 2010 while he was employed in the Property Control area as a Correctional Supply Supervisor II. The above job description does not indicate or suggest that the Property Control position involves any sustained or strenuous manual activity that would normally be associated with causation and/or aggravation of carpal and/or cubital tunnel syndrome." (RX7-ERX3) The evidence supports Dr. Sudekum's opinion that Petitioner's job duties during the supply supervisor assignment would not cause or aggravate Petitioner's bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome.

In his December 26, 2011, report, Dr. Sudekum explained that "Supply Supervisor I & II positions/check out position in the commissary involved "moderately repetitive, but non-strenuous, keyboarding and manual activity. The Supply Supervisor III position...does not appear to be either strenuous or repetitive with respect to manual activities....I did not identify any significant or sustained repetitive impact to the hand, repeated heavy gripping, grasping, or pounding with the hand, use of vibratory tools or abnormal sustained wrist or elbow postures involved in the job of a Correctional Supply Supervisors at Menard Correctional Center. The routine manual tasks performed by Correctional Supply Supervisors at Menard Correctional center, are relatively benign, non-traumatic activities that would not normally cause carpal tunnel syndrome, cubital tunnel syndrome or other common upper extremity 'repetitive trauma injuries'....I do not feel that [Petitioner's] prior employment as a Correctional Officer or

Maintenance Craftsman...caused, contributed to or aggravated carpal and/or cubital tunnel syndrome." (RX7-ERX2) The Commission notes that Dr. Sudekum's findings regarding the non-strenuous and non-repetitive nature of Petitioner's job is supported by the job analysis reports and the videos showing correctional officers demonstrating the work done by supply supervisors. Dr. Sudekum also noted that Petitioner's "nonwork-related risk factors that could potentially predispose him to the development of carpal and/or cubital tunnel syndrome include his age over 52 years and the existence of the right volar wrist ganglion cyst. Volar wrist ganglion cysts can cause compression and/or irritation to the adjacent median in the carpal tunnel region." Petitioner's history of a ganglion cyst is established by the medical records which indicate that the cyst was removed in 2003. (RX6)

Therefore, based on the totality of the evidence provided, the Commission finds that Petitioner has failed to establish that he sustained accidental injuries arising out of and in the course of his employment with Respondent on July 20, 2010. Accordingly, we reverse the Decision of the Arbitrator and deny compensation.

IT IS THEREFORE ORDERED BY THE COMMISSION that that the Decision of the Arbitrator is reversed as Petitioner failed to prove he sustained an accidental injury arising out of his employment with Respondent, and, therefore, his claim for compensation is hereby denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: MAY 30 2014
MJB/ell
o-04/22/14
052

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

STATE OF ILLINOIS	)	☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
	) SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF PEORIA	)	☒ Reverse	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Erik Brown,

Petitioner,

vs.

14IWCC0395

NO: 09WC9450

Sedona Staffing,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, permanent disability and medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July29, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0395

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $15,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 30 2014

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

MJB:bjg
0-4/22/2014
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0395

BROWN, ERIK
Employee/Petitioner

Case# **09WC009450**

SEDONA STAFFING
Employer/Respondent

On 7/29/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0149 LAW OFFICES OF WARREN E DANZ PC
MIKE SUE
710 N E JEFFERSON
PEORIA, IL 61603

0358 QUINN JOHNSTON ET AL
JOHN F KAMIN
227 N E JEFFERSON ST
PEORIA, IL 61602

14IWCC0395

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

ERIC BROWN,
Employee/Petitioner

v.

SEDONA STAFFING,
Employer/Respondent

Case # **09** WC **09450**

Consolidated cases: NONE.

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Peoria**, on **February 28, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
   ☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other: _____

FINDINGS

On **April 12, 2007**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this alleged accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the alleged accident.

In the year preceding the injury, Petitioner earned **$1,565.81**; the average weekly wage was **$260.97**.

On the date of accident, Petitioner was **26** years of age, ***single*** with **four** dependent children under 18.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $ **0.00** for TTD, $ **0.00** for TPD, $ **0.00** for maintenance, and $ **0.00** for other benefits, for a total credit of $ **0.00**.

Respondent is entitled to a credit of $ **0.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of **$260.97**/week for **37.5** weeks, because the injuries sustained caused the **7.5%** loss of use of his **person as a whole**, as provided in Section 8(d)2 of the Act.

Petitioner is now entitled to receive from Respondent compensation that has accrued from **April 12, 2007** through **February 28, 2013,** and the remainder, if any, of the award is to be paid to Petitioner by Respondent in weekly payments.

Respondent shall pay to Petitioner reasonable and necessary medical services of $ **5,807.98,** as provided in Sections 8(a) and 8.2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator JOANN M. FRATIANNI

July 22, 2013
Date

ICArbDec p. 2

JUL 29 2013

F. Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner testified he was hired by Respondent and assigned to work at Caterpillar. On April 12, 2007 he was delivering parts to a bin and as he was bent over another employee had sent an engine on a line that struck him in the lower back and knocked him down. Following this accident, Petitioner testified that he was taken to Caterpillar security but received no treatment as he was not a Caterpillar employee. He then returned and finished working his shift.

Petitioner testified that he was unable to get out of bed the next day due to pain. He called Respondent and advised them of the incident and was referred to IWIRC for treatment. Petitioner was seen at IWIRC on April 13, 2007 and released to light duty work. Petitioner came under the care of Dr. Christine Cisneros who diagnosed a lower back contusion and prescribed an MRI. The MRI was performed on April 19, 2007. Petitioner then returned to see Dr. Cisneros, who indicated that the MRI was normal and was unable to find any objective findings during her examination. She then released Petitioner to return to work regular duty on April 23, 2007.

In the meantime, Petitioner saw Dr. Daniel Hoffman, an orthopedic surgeon, on April 18, 2007. Dr. Hoffman referred Petitioner to see Dr. Trudeau for an EMG/NCV study. Dr. Hoffman also referred Petitioner to Central Illinois Pain Clinic where he underwent multiple injections.

Dr. Hoffman testified by evidence deposition (Px12). Dr. Hoffman testified he was not sure if had seen Petitioner prior to this injury. Dr. Hoffman recorded a history on April 18, 2007 and prescribed an MRI. The MRI did not show any herniated discs. Petitioner continued to complain of pain so he then was referred to a pain clinic. Dr. Hoffman testified there was a sciatic nerve trauma that was diagnosed by Dr. Trudeau during his EMG performed on September 12, 2007. Dr. Hoffman testified that he prescribed physical therapy and was seen by a neurosurgeon who felt that surgery was indicated. Petitioner then subsequently moved out of state. Dr. Hoffman testified he has not seen Petitioner since April 20, 2009. Dr. Hoffman indicated that Petitioner was at that time capable of performing light duty work with no lifting over 10 pounds, no crawling, bending, stooping and sitting and standing as needed. Dr. Hoffman testified that he had previously authored various no work slips as it was his understanding that no light duty was available. Dr. Hoffman indicated that no one had contacted him to see if Petitioner could perform light duty work, and also noted that Petitioner never asked if he could be released to light duty. Dr. Hoffman also testified he was not aware that Petitioner had been administered a drug screen which revealed positive findings. He was also not aware that Petitioner had undergone a FCE evaluation and never noticed any problems with his gait.

Petitioner then saw Dr. Paul Smucker on August 22, 2008. Petitioner saw Dr. Smucker at the request of Respondent. Dr. Smucker testified by evidence deposition (Rx1) that he reviewed medical records of treatment as part of his examination. Dr. Smucker noted an antalgic gait and limited weight bearing on the right. Range of motion to the right lower extremity was normal, on the left was tremendous guarding. Neurological exam to both lower extremities revealed normal right leg strength, but was not testable due to guarding and ratchety and breakaway pain. No evidence of fasciculation or atrophy was noted which would reflect muscle denervation or severe neuropathy. Reflexes were intact bilaterally and symmetric with no ankle clonus present. Dr. Smucker indicated ankle clonus would be present if there was an upper neural motor neuron lesion such as a brain or spinal cord injury. Dr. Smucker reviewed the MRI and felt it was normal. Dr. Smucker diagnosed left buttock contusion with subsequent leg and buttock pain paresthesia. Dr. Smucker recommended a FCE due to the guarding he found and noted the subjective complaints seemed to be out of proportion to what he could document during his examination. Dr. Smucker felt Petitioner was not in need of further trigger point and/or epidural steroid injections and felt he should avoid all narcotic pain medicines. (Rx1)

An FCE was subsequently performed and Dr. Smucker had the opportunity to review the results. Dr. Smucker noted variability in heel striking during ambulation activities, but while walking to an examination room while talking on his cell phone he demonstrated normal heel strike. Dr. Smucker concluded following the FCE that he had no medical explanation as to why Petitioner would be incapable of heel striking during the FCE examination. Dr. Smucker was of the opinion that Petitioner should return to work with no restrictions.

Dr. Smucker admitted that a normal MRI would not likely reveal a sciatic nerve injury and that the self-limiting behaviors noted during the FCE may be from Petitioner's perception of pain. Dr. Smucker did indicate that waxing and waning of symptoms could be associated with a sciatic nerve injury.

Mr. Nathan Porch testified by evidence deposition. (Rx2) Mr. Porch testified that he was the therapist who performed the FCE and has been a therapist since 1999. Mr. Porch testified the FCE was performed over two days, and included a written intake, hooking up a heart rate monitor and taking blood pressure before the exam. The functional testing consists of lifting, carrying, pushing, pulling and mobility tasks along with positional tolerance tasks. Mr. Porch testified that if a patient was not willing to load bear on one of their extremities, it would limit their ability to function at their highest level of performance in carrying loads and would also decrease ability with floor to waist lifting and ambulatory tasks.

Mr. Porch testified that on the first day of testing, Petitioner did not perform heel striking during all ambulation tests and in between the tasks he performed. In addition, Petitioner limited his left foot weight bearing while performing lifting tests. Mr. Porch noted that at the end of a task he observed Petitioner walking 60 feet to an exam room and demonstrated the ability to heel strike while walking. At that time Petitioner was using his cell phone. When Petitioner left the facility, he again started to demonstrate problems with heel striking.

Petitioner was examined at his own request by Dr. Michael Watson on October 15, 2012. Dr. Watson testified by evidence deposition (Px13) that he is a general orthopedic surgeon. During the examination he reviewed medical records of treatment and diagnostic testing previously performed. Dr. Watson felt that nerve studies performed on November 24, 2010 revealed mild to moderate chronic left L5 radiculopathy. When Petitioner attempted to walk with a normal gait pattern he modified his ambulation by not striking his left heel on the ground. Dr. Watson noted that Petitioner would walk on his toes with his left hip in a flexed position. Dr. Watson diagnosed sciatic neuropathy or piriformis syndrome from blunt trauma to the sciatic nerve. Dr. Watson felt this was related to the injury of April 12, 2007.

Dr. Watson disagreed with the full duty work release recommended by Dr. Smucker based on the amount of pain Petitioner was in and concurred with restrictions of no lifting greater than 10 pounds, which did not include lifting from floor level. Dr. Watson noted he did not believe the FCE conclusions would be consistent with a full duty work release.

On cross-examination, Dr. Watson testified he discarded all his notes and records concerning his examination and simply retained his report. Dr. Watson further testified his opinions are based on patient history and his subjective complaints of pain, along with physical examination findings. Dr. Watson indicated that he did not include the heel striking conflicting episodes during the FCE in his report as he was unsure of its significance. Dr. Watson did not perform any testing to rule out malingering.

Respondent introduced a report from Dr. Smucker dated December 31, 2012. This report indicates that Dr. Smucker reviewed the report of Dr. Watson along with medical records from Texas. Dr. Smucker following this review indicated his unwillingness to change his diagnosis and opinions.

Based upon the above, the Arbitrator finds that the conditions of ill-being as noted above, or more specifically, contusions to the sciatic nerve, are causally related to the accidental injury which arose out of and in the course of Petitioner's employment with Respondent on April 12, 2007. The Arbitrator affords more weight to the opinions of Dr. Smucker rather than those of Dr. Watson in reaching this conclusion.

G. What were Petitioner's earnings?

Petitioner alleges an average weekly wage of $475.00. No evidence was presented by Petitioner to corroborate that allegation.

14IWCC0395

Respondent claims an average weekly wage of $260.97 and introduced into evidence a wage statement that supports their claim.

Based upon the above, the Arbitrator finds that the average weekly wage is $260.97 with actual earnings for the year preceding this accident date of $1,565.81.

J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Petitioner introduced into evidence the following unpaid medical bills which were incurred after this accidental injury:

OSF Medical Center	$ 4,804.00
OSF Afn, Inc.	$ 255.40
Injured Workers' Pharmacy	$ 6,536.63
Dr. Daniel Hoffman	$ 90.00
Memorial Medical Center	$ 739.48
Dr. Edward Trudeau	$ 3,652.00
Methodist Outpatient Therapy	$ 2,019.00
IWIRC	$ 136.98

These charges total $18,233.49.

The Arbitrator finds that Dr. Cisneros was of the opinion that Petitioner as of April 23, 2007 was in no need for further medical treatment.

Petitioner did continue receiving medical treatment after that date and reported minimal symptom improvement. Dr. Smucker was of the opinion that the injections were not reasonable nor necessary. Dr. Watson did not give his opinion as to the propriety of such medical treatment.

See also findings of this Arbitrator in "F" above.

Based on said findings, the Arbitrator awards the following medical charges, subject to the limitations imposed by the Medical Fee Schedule created by the Act, which were incurred prior to the examination of Petitioner by Dr. Smucker:

Dr. Edward Trudeau	$ 3,652.00
Methodist Outpatient Therapy	$ 2,019.00
IWIRC	$ 136.98

These charges total $5,807.98.

All other charges not so awarded by this Arbitrator are hereby denied for the reasons cited above.

K. What temporary benefits are in dispute?

Ms. Marchelle Marfell was called by Respondent to testify. Ms. Marfell testified she was office manager for Respondent on April 12, 2007. On that date Petitioner reported an injury at work and she referred him to IWIRC.

She later received a note from IWIRC documenting work restrictions, following which she contacted Petitioner about returning to light duty work.

Ms. Marfell testified that she documents all conversations with employees about returning to work on a computer chronology note system. She reviewed her notes that indicated she initially contacted Petitioner at 11:09 a.m. on April 18, 2007 to offer light duty work. She called him again at 1:56 p.m. that same day as she had not heard from him. At that time she spoke with Petitioner, confirmed the job, the hours and pay. Petitioner responded that he would need to think about it and would contact them back and let them know. Petitioner then called at 9:07 a.m. on April 19, 2007, and stated that he would accept the position but wanted to start on Monday, April 23, 2007.

Ms. Marfell identified a light duty offer (Rx4a) letter which Petitioner signed indicating he accepted the offer and the start date was April 23, 2007. Ms. Marfell testified that Petitioner did not show up to work that day. He was scheduled to start at 8:00 a.m. but called in at 11:39 a.m. indicating that he would not be able to work due to the hours. He indicated he had his kids during the day and he had one home sick. He then executed a form rejecting the light duty work offer. (Rx4b)

Ms. Marfell testified that on April 23, 2007 she received the results of a drug screen that had been performed at IWIRC. The results of the drug screen were reviewed after the conversation in which Petitioner rejected the offer of light duty work. Ms. Marfell testified that per company policy, Petitioner was terminated for the positive drug test and was notified in writing sent certified mail of his termination. (Rx5) The doctor had signed off of the drug screen report on April 20, 2007.

Petitioner claims entitlement to temporary total disability benefits from respondent for 269-1/7 weeks for the period of April 18, 2007 through May 11, 2007 and from February 8, 2008 through February 28, 2013. Respondent denies any liability for temporary total disability benefits in this matter.

See also the findings of this Arbitrator in "F" above.

Based upon said findings, the Arbitrator further finds that as a result of this accidental injury, Petitioner was not temporarily and totally disabled from work for any period of time so claimed. All claims of temporary total disability by Petitioner are hereby denied.

L. What is the nature and extent of the injury?

See findings of this Arbitrator in "F" above.

Based upon said findings, the Arbitrator finds that as a result of this accidental injury, Petitioner sustained a sciatic nerve injury with continued subjective complaints that are now permanent in nature and subject to an award of permanent partial compensation.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse Accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STEVEN RUSHING,

Petitioner,

14IWCC0396

vs.

NO: 10 WC 17180

PRAIRIE FARMS DAIRY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability (TTD), medical expenses, and permanent partial disability, and being advised of the facts and applicable law, hereby reverses the Decision of the Arbitrator and finds that Petitioner sustained accidental injuries arising out of and in the course of his employment on January 18, 2010.

The Commission finds that Petitioner's work duties were repetitive in nature. His right shoulder condition is causally related to his work duties. Having found accident and causal connection, the Commission finds Petitioner is entitled to TTD from April 2, 2010 through June 10, 2010, representing 10 weeks. The Petitioner is entitled to medical expenses in the amount of $5,589.19. The Commission finds that Petitioner sustained ten percent loss of use the right shoulder pursuant to Section 8(d)(2) of the Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission makes the following findings:

1. Mr. Rushing has been employed with Prairie Farms Dairy for 13 years. He has worked in a variety of positions during his employment that required a lot of heavy lifting and pulling at or above the shoulder level. T.24. He denied any prior right shoulder issues.

2. Mr. Rushing admitted into evidence and testified as to the following job history:

   a. From June 2000 through December 2000, he worked in the warehouse. He would pick orders by hand and stack them onto a pallet. Some of the pallets were high and usually were above his head. T.17 & PX.4.

   b. From December 2000 to December 2003, he worked on the D Dock where he would load and unload trailers. The plastic milk cases were stacked 4 to 6 cases high. PX.4. He testified that the stacks were about even with his head. T.18. He would also pull the product with a hook. PX.4.

   c. From December 2003 to December 2004, he worked in the ABC cooler. He drove a forklift and hand wrapped the pallets with plastic wrap. PX.4.

   d. From December 2004 to November 2008, he ran the HTST (high temp, short time) hand bag filler and half gallon machine. PX.3., PX.4. & T.19. He testified that he filled 10 quart bags and 5 gallon bags of product. He would put a label on the bag, then grab the bag and stick it in a filler tube. The machine would fill the bag and drop it on the table. T.19. He would grab the bag and slide it across the table into a milk crate. He would put two ten quart bags into a case or one 5 gallon bag into a case. He would do this for 8 hours a day, 40 hours a week. T.20. He testified that it was not uncommon to fill and package over a 1000 or more 10 quart bags plus 5 gallon bags per day. PX.3. The HTST position did not require him to reach overhead. T.32.

   e. From November 2008 to March 2009, Mr. Rushing ran the EQ5 filling machine. PX.3., PX.4. He stated that cleaning the machine was much more tedious than cleaning the half gallon machine. *Id.* He would put cartons into chutes. The machine would take and unfold the cartons, glue them and then fill the carton with product and send it out the other end. T.21.

   f. From March 2009 to the present, Mr. Rushing worked as a mix maker and ran the HTST machine "off and on" during this time period. He would make ice cream mixes, milks, and creams. He would take a bag off a pallet, open it and empty it into the mixing machine. T.22. A full pallet would require him to reach above his head. *Id.* Most of the bags were 50 pounds and contained whey *Id.* The number of bags varied per day, but he did between 100 and 300 bags per shift. *Id.* He stated that this was manual labor and required a lot of pulling and lifting. T.24.

3. Mr. Rushing testified that his work is labor intensive. He did a lot of lifting and pulling on a daily basis. T.21. He stated that the top row of the whey bags was between 44 and 48 inches off the ground, which was about mid-chest level. T.26. However, the pallet was on a platform and he was on a grate that was lower than the platform. T.27. He stated that most of his work was below the shoulder level. T.28. The majority of the time he would use both arms to pull the bags off the pallets.

4. Mr. Kenneth Felty testified for the Respondent. He has been employed by the Respondent for 8 years. He reviewed the job description. He measured the pallets of whey and stated that the top level was 44 to 48 inches off the ground. T.42. The HTST did not require lifting at or above the shoulder. T.43. However, he did not perform this job.

5. On cross-examination, Mr. Felty testified that the cocoa powder was the only pallet stacked higher than 44 to 48 inches. T.44. However, the Petitioner would only have to do this one day a week at most. T.45. The pallet would get lower as they took the bags off. *Id.* He stated that there were instances in the course of one day multiplied by several days in a year over several years where the Petitioner was lifting 50 pound bags off a pallet that were at or above the shoulder level. T.47.

6. Petitioner was previously seen at Memorial Physical Therapy Center in 2006. He attended physical therapy from May 3, 2006 through June 2, 2006. According to the outpatient self-evaluation form of May 3, 2006, Mr. Rushing reported that he had medial epicondyldtis and ulnar transposition in both arms in 2002 and 2003. His main complaints were in his right side lower back and shoulder. He was not sure if this was work-related. On May 24, 2006, Petitioner had pain in the right posterior shoulder region under the axilla at the border of the lateral scapula. He reported that he did not sleep well at night and tossed and turned especially when he rolled on his right side. He was discharged on June 2, 2006. At the time of his discharge, Petitioner had met the short term goals, but was to continue with a home exercise program. RX.4.

7. Mr. Rushing presented to Dr. Rawdon of Healthcare Physicians of Southern Illinois on January 19, 2010 for right shoulder pain. He had no known injury. PX.8. He was 5' 10" tall.

8. Petitioner underwent a right shoulder MRI without contrast on March 11, 2010. The MRI revealed AC joint degenerative and inflammatory changes of moderate degree resulting in impingement with distal supraspinatus tendinosis and a partial thickness undersurface articular rim-rent type tear, but no full thickness tear or retraction. PX.7.

9. Mr. Rushing was seen by Dr. Donald Weimer of Belleville Orthopedics on March 18, 2010. The Petitioner had no history of injury, but performed a rather labor intensive job. He had pain throughout the shoulder, worse over the AC joint and somewhat down over the lateral deltoid area. Dr. Weimer noted that given Petitioner's age and activity level, right shoulder arthroscopy with decompression, distal clavicle excision and debridement was recommended. PX.6.

10. According to the Fort Dearborn Life Claim Form completed on March 25, 2010, Petitioner's right shoulder impingement, AC joint arthritis and rotator cuff tear were noted as not being work-related. RX.1. Dr. Weimer testified that his nurse completed the form and he does not necessarily review disability claim forms. PX.5. pg.29. His nurse marked that the right shoulder pathology was not work-related. *Id.*

11. Petitioner underwent right shoulder arthroscopy with arthroscopic subacromial decompression, arthroscopic distal clavicle excision, and debridement of bursal surface rotator cuff tendonosis on April 2, 2010. There was mild degenerative fraying of the posterior labrum. There was impingement present beneath the undersurface of the anterior acromion and the acromioclavicular joint. The bursal side of the rotator cuff was inspected and diffuse tendonosis was found, but no tear was identified. The area of the tendonosis was debrided. The post-operative diagnosis was right shoulder subacromial impingement, acromioclavicular joint osteoarthritis, bursal surface rotator cuff tendonosis. PX.8.

12. Following the surgery, Mr. Rushing underwent physical therapy with Pro Rehab. He was discharged from physical therapy on June 7, 2010. PX.9.

13. Petitioner was seen by Dr. Weimer on June 10, 2010. He was 10 weeks post right shoulder surgery. He was able to elevate to 180 degrees and external rotate to 60 degrees. The impingement, cross-arm, Jobe's and empty can tests were negative. His strength was +5. He was released back to work full-duty. PX.6.

14. At Respondent's request, Dr. Frank Petkovich reviewed the medical records and authored a report on November 8, 2011. He diagnosed Mr. Rushing with right shoulder degenerative arthritis, right acromioclavicular joint with impingement and tendinosis at the insertion of the supraspinatus tendon, right shoulder. He opined that his work had nothing to do with his condition. It did not cause any exacerbation, aggravation or acceleration of the underlying degenerative process. The surgery was ultimately necessary and the treatment was reasonable. RX.7.

15. Dr. Petkovich performed a Section 12 examination for the Respondent on December 7, 2011. He diagnosed Mr. Rushing with impingement of the right shoulder subacromial space with tendinitis at the insertion of the rotator cuff, and degenerative arthritis of the right acromioclavicular joint. He opined that Petitioner's employment

was not a cause for his condition. His job did not cause any exacerbation, aggravation or acceleration of his right shoulder condition. His condition was idiopathic and unrelated to his employment. All the treatment had been reasonable and necessary. He then authored a second report on February 28, 2012 following his review of Dr. Weimer's deposition and his review of the job history and description. His opinion remained unchanged. RX. 7.

16. Petitioner testified that he is currently able to work without any problems. T.15. His right shoulder will be stiff if he sleeps on it, which then requires him to take Ibuprofen. T.16.

17. Dr. Weimer was deposed on February 10, 2012. He is a board certified orthopedic surgeon. PX.5. He diagnosed Petitioner with impingement and a partial thickness rotator cuff tear. During surgery, he noted that the rotator cuff was frayed and performed debridement of the rotator cuff. He then took care of the impingement process and the arthritis at the acromioclavicular joint with decompression and distal clavicle excision. PX.5. pg.9. He had Petitioner off work from April 2, 2010 through June 10, 2010, when he was released back to work full-duty. PX.5. pg.11.

18. Dr. Weimer opined that Petitioner's job duties, given the type of duties and the length of time he was performing his duties, were a cause in the development of his problems which necessitated treatment. PX.5. pg.13. The treatment was reasonable and necessary.

19. On cross-examination, Dr. Weimer noted that Mr. Rushing performed a labor intensive job. It was unusual to see a person of his age with degenerative changes at his AC joint to the point it was causing impingement of the rotator cuff. He stated that if it was not job related, then what else was it related to as it was unlikely based on his age. PX.5. pg.18. He was not aware of any substantial injury to Petitioner's right shoulder. *Id.* Dr. Weimer did not review a physical demand analysis and did not know what activities Petitioner performed outside of work.

20. Dr. Weimer noted that there were no acute findings during the shoulder surgery. PX.5. pg.23. He noted that Petitioner's pathology would have developed over time. *Id.* His post-operative diagnosis was right shoulder subacromial impingement, acromioclavicular joint osteoarthritis and bursal surface rotator cuff tendinosis. Those are diagnosis commonly seen in aging adults. PX.5. pg.25. He stated that impingement syndrome is typically caused by performing activities at or above the shoulder level or with weightlifting. *Id.* He noted that Petitioner's job description did not mention any work at or above the shoulder level. PX.5. pg.26. He opined that the impingement caused the rotator cuff tendinosis. PX.5. pg.27.

21. Dr. Frank Petkovich was deposed on March 5, 2012. Dr. Petkovich is board certified in orthopedic surgery and is an independent medical evaluator. RX.7. pg.4. He performed an IME on the Petitioner on December 7, 2011. He reviewed the MRI and found it consistent with impingement in the right shoulder with degenerative changes at the acromioclavicular joint. RX.7. pg.10. He diagnosed Petitioner with impingement of the right shoulder subacromial space with tendinitis at the insertion of the rotator cuff and degenerative arthritis of the right acromioclavicular joint. RX.7. pg.12. He stated that most of the time impingement is idiopathic. He testified that repetitive overhead work and weightlifting can cause impingement and degenerative changes. RX.7. pg.13.

22. Dr. Petkovich opined that Petitioner's impingement caused the tendinitis in the right shoulder at the insertion of the rotator cuff. RX.7. pg.15. He did not believe that Petitioner's employment had anything to do with his underlying degenerative condition in his right shoulder, specifically his degenerative arthritis right acromioclavicular joint or the bone spurs in the subacromial space and the tendinitis at the insertion of the rotator cuff. *Id.* He did not have a rotator cuff tear so his impingement was not far enough along that it had advanced to a tear. His right shoulder pathology was idiopathic. *Id.*

There is no legal requirement that a certain percentage of the workday be spent on a task to support a finding of repetitive trauma. The Commission often categorizes compensable injuries into two types--those arising from a single identifiable event and those caused by repetitive trauma. See *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 530, 505 N.E.2d 1026, 1028, 106 Ill. Dec. 235 (1987). An employee who alleges injury from repetitive trauma must still meet the same standard of proof as other claimants alleging accidental injury. *Three "D" Discount Store v. Industrial Comm'n*, 198 Ill. App. 3d 43, 47, 556 N.E.2d 261, 264, 144 Ill. Dec. 794 (1989). The employee must still show that the injury is work-related and not the result of a normal degenerative aging process. *Gilster Mary Lee Corp. v. Industrial Comm'n*, 326 Ill. App. 3d 177, 182, 759 N.E.2d 979, 983, 259 Ill. Dec. 918 (2001).

It is for the Commission to determine, as a matter of fact, whether a pre-existing condition has been aggravated, and that determination will not be overturned unless it is against the manifest weight of the evidence. *General Electric v. Industrial Comm'n*, 89 Ill. 2d 432, 438, 433 N.E.2d 671, 60 Ill. Dec. 629 (1982). Even under a repetitive trauma concept, the petitioner must establish that the injury was related to his employment. *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 476, 510 N.E.2d 502, 109 Ill. Dec. 634 (1987). Repetitive trauma claims generally rely upon medical testimony to establish the causal connection between the work performed and the claimant's disability. *Nunn*, 157 Ill. App. 3d at 477.

The Commission notes that the evidence establishes that Mr. Rushing had a degenerative condition in his right shoulder that required surgery. The surgery revealed mild degenerative fraying of the posterior labrum along with impingement. While Petitioner may have treated for

his right shoulder in 2006, no evidence was admitted into evidence establishing that Petitioner underwent any medical treatment to his right shoulder between June 2006 and January 2010.

During the period between June 2006 and January 2010, Petitioner was working a variety of jobs for the Respondent. His job duties required lifting 50 pound bags up to 300 times a day, or filling bags up to 1000 times per day. The Commission finds that Petitioner's job duties were repetitive in nature. Also, there is no evidence that any of Petitioner's non-work related activities contributed to his right shoulder condition. Therefore, the Petitioner proved that his right shoulder condition was aggravated or accelerated by his repetitive work duties and that his condition is causally related to his job duties.

The Commission further finds the opinion of Dr. Weimer more persuasive than the opinion of Dr. Petkovich. Dr. Weimer noted that the condition was degenerative in nature, but was unlikely due to his age given he was only 39. He opined that it was work-related given his job required manual labor, was repetitive in nature and he performed it for a lengthy period of time. Dr. Petkovich's opinion is that it is likely idiopathic in nature. However, his opinion ignores the fact that Petitioner's job duties were repetitive in nature and did require overhead lifting of heavy bags. All of which can contribute to Petitioner's condition.

The Commission finds the Petitioner is entitled to TTD from April 2, 2010 through June 10, 2010, representing 10 weeks. The Petitioner is entitled to medical expenses in the amount of $5,589.19. The Commission finds that the Mr. Rushing sustained 10% loss of use of the right shoulder pursuant to Section 8(d)(2) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on August 30, 2013, is hereby reversed for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $620.34 per week for a period of 10 weeks, from April 2, 2010 through June 10, 2010, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $558.31 per week for a period of 50 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the loss of use of 10% of the person-as-a-whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $5,589.19 for medical expenses under §8(a) of the Act, and subject to the fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $28,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court

DATED: MAY 30 2014

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

MJB/tdm
O: 4-22-14
052

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse Accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DAVID MCCORMICK,

Petitioner,

14IWCC0397

vs.

NO: 11 WC 44752

PIERCY AUTO BODY, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability (TTD), medical, and permanent partial disability, and being advised of the facts and applicable law, hereby reverses the Decision of the Arbitrator and finds that Petitioner's current condition of ill-being is causally related to his April 7, 2011 work-related accident.

The Commission finds that the Petitioner is entitled to TTD from November 3, 2011 to April 17, 2012, representing 23-5/7 weeks. The Petitioner is entitled to medical expenses in the amount of $10,032.76, which includes $9,460.07 that was paid by the Illinois Department of Public Aid, and the outstanding bill from Central Illinois Neuro Health in the amount of $535.69 and Bloomington Heart Institute in the amount of $37.00. The Commission finds that Petitioner sustained twenty-five percent loss of use of the person-as-a-whole pursuant to Section 8(d)(2) of the Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission makes the following findings:

1. On April 7, 2011, Mr. David McCormick was preparing an engine and transmission for painting. The caster wheel exploded causing the engine hoist to strike him in the back of the head knocking him to the floor. T.9. He saw stars, but did not lose consciousness. He had a lump and a gash in his head. T.10. He went home for lunch around 12:30 p.m. and was still bleeding. He returned and continued to work his regular duties.

2. Jason Hospelhorn, the President of Piercy Auto Body, testified that he received a phone call from his manager informing him the hoist broke and fell on Petitioner's head. T.33. When he arrived at the shop, Petitioner had already resumed working. Petitioner showed him the gash and bump on his head. The Petitioner declined treatment. T.34. He noted there was dry clotted blood on the injury. T.35.

3. Mr. McCormick testified that he started to lose some strength in his arms and had pain running down the back of his neck and into his shoulders. T.12. At first he thought it was just a "crook" in his neck so he changed his pillow. *Id.* He started switching pillows about a week to two weeks after the accident. T.13. He denied prior cervical pain, right arm pain and right hand pain.T.22.

4. Petitioner continued to work his regular job and quit on April 29, 2011. T.13. He stated that initially he was going to be off for the summer as he did not have a sitter for his daughter. However, he then had the issue with his arm and had to stop working. *Id.* He was in constant pain when he last worked for the Respondent. He could not pour milk out of a gallon jug. He could not lift 10 pounds. T.14. His arm did not get any better while off work. He was taking care of his seven and a half year old daughter. T.26. He testified that he did not play with her or horse around with her while he was off work. T.27.

5. Mr. Hospelhorn testified that Petitioner continued to perform his job through April 29, 2011. He testified that about 3 weeks after the accident, the Petitioner advised him that he was having a hard time lifting his arm above his shoulder. T.35. The Petitioner told him that he would have to paint stuff by turning it sideways as a way to reach the higher parts of the object. T.36.

6. Mr. Hospelhorn stated Petitioner showed up to work at 7:45 a.m. on the day he quit. The Petitioner stated that his arm was bothering him and he could not lift it above his shoulder. T.36. He stated that he was having issues completing his job and issues with his spouse. T.37. Mr. McCormick told him he quit and that he had to take care of his daughter. *Id.* Mr. Hospelhorn was not aware of the Petitioner having any issues prior to the accident. He further testified that the Petitioner did not have any issues performing his job after the accident. T.38. He performed his regular duties for about 3 weeks before he started having issues with his shoulder and issue with lifting his arm. T.39.

14IWCC0397

7. Petitioner testified that between the end of April and July, when he went to the doctor, he contemplated suicide several times as he could no longer take the pain. T.26. He did not go to the ER as he did not have insurance and had no way to pay for the treatment. *Id.*

8. McCormick presented to Dr. Robert Duncan of Colfax Family Chiropractic on July 8, 2011. He reported pain in the neck and right shoulder following a work accident. His pain had been slowly increasing since the accident. The diagnosis was cervicalgia and dorsalgic with radicular neuralgia and associated vertebral subluxations. PX.2. He treated with Dr. Duncan for 3 visits only. T.18. In lieu of payment, Petitioner's wife provided marketing services to Dr. Duncan.

9. Petitioner was seen by Linda Cooper, NP of Sugar Creek Primary Care on August 8, 2011. He reported that his pain started in the back of his head and went down the right shoulder through the arm. He had burning pain since June. Two weeks after the accident, he developed pain in the right side of his neck, along the top of his right shoulder, and in his posterior right forearm. He had a large knot on top of his shoulder base of the neck. He started lifting weights using a dumbbell but was unable to curl his right forearm with more than 10 pounds due to weakness. Examination of the head and neck was normal with satisfactory range of motion. His strength was adequate with normal stability. The right upper extremity was normal to inspection. He had full shoulder extension, flexion and rotation. His mood, affect and judgment were appropriate. The diagnosis was muscle spasm. PX.4. Dr. Sumit Ranjan took Petitioner off work pending his neuro-surgeon evaluation.

10. Petitioner underwent MRI of the cervical spine on August 23, 2011 that revealed mild degenerative changes at C5-C6. PX.5. The right shoulder MRI was unremarkable.

11. Petitioner underwent an MRI of the cervical spine on September 26, 2011 that revealed an abnormal signal with enhancement within the cervical cord at the C4 level. The MRI was consistent with an intramedullary lesion. Infectious/inflammatory and neoplastic etiologies were diagnostic considerations. PX.7.

12. Jerry Frank completed a First Report of Injury on September 29, 2011. It was noted Petitioner was injured on April 7, 2011 when a hoist struck his head. He now had compressed discs in the neck affecting the nerve in his neck, shoulder and right arm. He last worked on April 29, 2011. PX.14.

13. Petitioner underwent an MRI of the cervical spine on October 28, 2011 that again demonstrated the intramedullary lesion at C4. The enhancement was more pronounced since the prior MRI. The finding was concerning for intramedullary neoplasm. PX.8.

14. Mr. McCormick was seen by Dr. Emilio Nardone on November 8, 2011. He reviewed the MRIs and recommended an EMG/NCV to better delineate the problem. The Petitioner had narrowing of the disc at C4-C5, C5-C6 with a slight anterolisthesis of C4 and C5 on flexion view. PX.6.

15. Petitioner underwent an EMG on December 5, 2011 that revealed right C6 radiculopathy, at least moderate, mild right median neuropathy at the wrist or carpal tunnel syndrome. Early mild left ulnar nerve entrapment at the elbow was also seen. RX.3.

16. Petitioner underwent a myelographic CT scan of the cervical spine on January 13, 2012. The test revealed mild cervical spondylosis at C4-C5 and C5-C6. There was uncovertebral osteophyte formation narrowing the right neural foramen at C4-C5 and C5-C6 and left neural foramen at C5-C6. He also underwent a cervical myelogram for right shoulder, scapular and neck pain. The cervical myelogram showed no significant extradural defect. PX.1.

17. Petitioner underwent a C4-C5, C5-C6 anterior decompression with microsurgical dissection, C4-C5, C5-C6 allograft and fusion, C4-C6 anterior plating on January 27, 2012. The post-operative diagnosis was spondylosis with foraminal stenosis. PX.1.

18. Dr. Nardone authored a report to Petitioner's attorney on February 14, 2012. He opined that Petitioner's work injury caused the symptoms for which he was treated and required surgery. The foraminal stenosis was pre-existing, but the fact that he developed a neurological deficit, and also the signal change within the spinal cord seemed to have a direct relationship with the work injury of May 2011. PX.1.

19. Petitioner underwent an IME with Dr. Andrew Zelby on February 27, 2012. He diagnosed Petitioner with cervical spondylosis, benign neoplasm of the spinal cord, and history of anterior cervical discectomy and fusion. The intramedullary abnormality in the spinal cord was not traumatic in origin. The work injury did not cause any condition in his cervical spine or cause the modest degenerative condition to become symptomatic. The intramedullary was not consistent with myelomalacia. If it were traumatic, then he would have had symptoms instantaneous and profound with the onset of paralysis. His lack of symptoms for 3 weeks, along with the findings on the diagnostic studies demonstrated the injury did not cause his constellation of symptoms or the intramedullary findings in the spinal cord. The surgery was not reasonable or necessary. There was no relationship between his reported injury and the intramedullary abnormality in his spinal cord. He sustained no permanency. RX.1.

20. Petitioner was seen by Dr. Nardone on April 17, 2012. Petitioner was happy with the results and the x-rays looked good. The Petitioner was discharged from care with no

restrictions. Because of the signal change within the spinal cord, he recommended a six month check-up. PX.12.

21. Petitioner testified that he did not return to work until October 2012. Mr. Richard Taylor testified that the Petitioner returned to his prior job performing the same duties. T.45. He stated that he can only sleep in a couple of positions. His shoulder tends to dislocate and he has a little bit of fatigue in his arm. T.22. He has lost a little bit of range of motion in his neck. *Id.* His right arm pain is not 100 percent. T.23. He also has some atrophy in his right biceps. *Id.*

22. Dr. Nardone was deposed on November 6, 2012. He is board certified in neurosurgery. PX.1. He testified that all the test results point to the accident as the cause of the injury that required the surgery. PX.1. pg.11.

23. On cross-examination, he testified that the findings on the MRI, CT scan and myelogram would have pre-dated the work accident. He stated that the Petitioner's injury was kind of discrete and did not have the signal and overall characteristics of an expansive lesion. He stated that there was a small probability that it developed on its own without trauma, but typically this condition is associated with trauma. PX.1. pg.14. He stated that any trauma that causes sudden movement of the neck or movement of the spinal cord could cause his condition. Symptoms, however, would typically occur immediately. Some may have delayed symptoms, but a large majority of people would experience immediate symptoms within the next one to two days. *Id.* He stated that if the Petitioner did not experience symptoms within a couple of days, then it was more difficult to put together. *Id.*

24. Dr. Nardone testified that if the Petitioner did not seek treatment for 3 months, his opinion would be impacted. He stated that three months is a long period and makes it difficult to justify a statement that the trauma was the only cause of the symptoms. PX.1. pg.15. He stated that the symptoms were coming from the myelomalacia, which was coming from the lesion in the spinal cord. PX.1. pg.16.

25. Dr. Zelby was deposed on February 21, 2012. He is board certified in neurosurgery. He stated that his diagnosis was degenerative in nature except what was within the substance of the spinal cord. He stated that the lesion was not traumatic, rather it was neoplastic. It was not clear what it was. RX.1. pg.13. It was something that was non-degenerative, non-traumatic that was in the spinal cord that was not the spinal cord. *Id.* There was no way to determine how long it had been present. *Id.* He stated that if the changes in the spinal cord were related to the trauma, then the symptoms would have been instantaneous and dramatic like as in quadriplegia. There were no acute abnormalities to suggest that the incident caused or accelerated any condition. RX.1. pg.14. He noted that the symptoms did not present for 3 weeks. Given it took three

months to seek treatment, it was obvious that he sought treatment for a condition that had nothing to do with an incident. RX.1. pg.15.

26. He stated that the surgery was not necessary. RX.1. pg.16. He had mild degenerative changes that had no huge pathology. He had no condition that was amenable to surgical treatment. He stated that the Petitioner sustained a contusion to the scalp and given the timing of the symptoms, he would be hard pressed to find medical evidence to support any other diagnosis. RX.1. pg.17. There is no medical evidence to support that the medical treatment was causally related to the accident *Id.*

27. On cross-examination, Dr. Zelby stated that C6 radiculopathy is a sign of neurological impairment. RX.1. pg.19. He stated that deltoid and bicep weakness on one side can be indicative of neurological problem. RX.1. pg.20. He stated that hypothetically speaking, being struck on the head by a car engine could aggravate a degenerative cervical condition. RX.1. pg.21. He stated that it is possible he could have cervical pain and not treat with a doctor. He had a small bone spur that was slightly encroaching on the spinal fluid sleeve and causing trace narrowing of the channel on the right. RX.1. pg.23. This is not consistent with right arm pain as there is no neural impingement.

The petitioner has the burden of establishing, by a preponderance of the evidence, some causal relation between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill. 2d 52, 63, 541 N.E.2d 665, 669, 133 Ill. Dec. 454 (1989). The determination as to causal connection falls uniquely within the province of the Commission and will not be overturned unless it is contrary to the weight of the evidence. *Boatman v. Industrial Comm'n,* 256 Ill. App. 3d 1070, 1071-72, 628 N.E.2d 829, 830, 195 Ill. Dec. 365 (1993). It is solely within the Commission's province to judge the credibility of witnesses, determine what weight to give testimony, and resolve conflicting evidence, including medical testimony. *McRae v. Industrial Comm'n,* 285 Ill. App. 3d 448, 451, 674 N.E.2d 512, 514, 220 Ill. Dec. 969 (1996).

The Commission finds that the delay in seeking medical treatment does not support a finding of no causal connection. It is well established that an employee will not be denied compensation because he continued to work for as long as he could after the injury. *Christman v. Industrial Comm'n* (1989), 180 Ill. App. 3d 876, 536 N.E.2d 773. There is sufficient evidence that the Petitioner began to experience symptoms shortly after the accident. Those symptoms were not present prior to the accident. They are causally related to his work accident.

The parties stipulated that the Petitioner sustained a work-related accident on April 7, 2011. The accident was reported and the Petitioner continued to work. The Petitioner testified that he started to lose some strength in his arms and had pain running down the back of his neck and into his shoulders. Mr. Hospelhorn testified that Petitioner advised him that he was having a hard time lifting his arm above his shoulder. The Petitioner also advised Mr. Hospelhorn that he had to alter the way in which he worked. The Commission notes that none of those issues were

present prior to the accident. In fact, Mr. Hospelhorn testified that he was not aware of the Petitioner having any issue performing his job prior to the accident.

The Commission finds the opinion of Dr. Nardone more persuasive than the opinion of Dr. Zelby. Dr. Nardone noted that some people may have a delayed onset of symptoms. He further noted that all of the tests point to the accident as being the cause of Petitioner's condition. Dr. Zelby, however, testified that the condition was degenerative in nature and there was nothing to suggest the incident caused or accelerated any condition. However, he then testified that being struck in the head by a car engine could aggravate a degenerative condition. He further noted that it was possible to have cervical pain and not treat with a doctor.

The Commission is not persuaded by the opinion of Dr. Zelby that, despite being hit in the head by an engine hoist, petitioner's condition is not related to the work accident. There is no evidence of any other accident as being the cause of Petitioner's condition. The chain of events demonstrates that Mr. McCormick's condition is causally related to his work accident.

Therefore, the Commission finds Petitioner proved that his current condition is causally related to the work-related accident. The Petitioner is entitled to TTD from November 3, 2011 through April 17, 2012, representing 23-5/7 weeks. The Petitioner is entitled to medical expenses in the amount of $10,032.76. The Commission finds that Petitioner sustained twenty-five percent loss of use of the person-as-a-whole pursuant to Section 8(d)(2) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on April 7, 2011, is hereby reversed for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $441.64 per week for a period of 23-5/7 weeks, from November 3, 2011 through April 17, 2012, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $397.48 per week for a period of 125 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the loss of use of 25% of the person-as-a-whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $10,032.76 for medical expenses under §8(a) of the Act, and subject to the fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $70,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court

DATED: MAY 30 2014

Michael J. Brennan

Thomas J. Tyrrell

MJB/tdm
O: 4-22-14
052

DISSENT

I respectfully dissent from the decision of the majority. Arbitrator Mathis' findings are both thorough and well reasoned. This decision is correct and should be affirmed.

Kevin W. Lamborn

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jame Vaughn,

Petitioner,

vs.

14IWCC0398

NO: 13 WC 8414

State of Illinois,
Shawnee Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 12, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: MAY 30 2014

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

MJB:bjg
0-5/6/2014
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0398

VAUGHN, JAMES
Employee/Petitioner

Case# **13WC008414**

SOI/SHAWNEE CORR CTR
Employer/Respondent

On 11/12/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
FARRAH L HAGAN
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

NOV 12 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **Williamson**)

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

James Vaughn
Employee/Petitioner

v.

SOI/Shawnee Corr. Ctr.
Employer/Respondent

Case # **13** WC **8414**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Herrin**, on **October 9, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **June 21, 2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$58,080.00**; the average weekly wage was **$1,116.92**.

On the date of accident, Petitioner was **35** years of age, ***married*** with **2** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $- for TTD, $- for TPD, $- for maintenance, and $- for other benefits, for a total credit of $-.

Respondent is entitled to a credit of $**if any** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical expenses outlined in PX1 within the limits of Sections 8(a) and 8.2 of the Act. Respondent shall be given credit for any amounts previously paid through its group carrier and shall hold Petitioner harmless from any claims made by any healthcare providers for which Respondent is receiving this credit, as provided in §8(j) of the Act.

The petitioner has reached Maximum Medical Improvement, but the Arbitrator finds that he has suffered no permanent disability as a result of the accident.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

November 12, 2013
Date

NOV 12 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAMES VAUGHN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 13 WC 08414
	)	
STATE OF ILLINOIS/SHAWNEE C.C.,	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

STATEMENT OF FACTS

The petitioner is a Correctional Officer. On June 21, 2012, he was assigned to the inmate yard. There is a phone in the yard which is secured to the wall in a locked box. The phone rang, and the petitioner turned to answer it. He testified that he dropped the lock, bent over to retrieve it, and while straightening up, struck his head on the corner of the box. He testified that he was not paying attention to his location vis-a-vis the lockbox because he was concentrating on the inmates' location. He wrote up an incident report that day. See RX2.

The petitioner reported to the Heartland Regional Medical Center Emergency Room. He provided a consistent history and was noted to have a small abrasion. A CT scan was done and was normal. He was provided pain medication and discharged. PX3.

The petitioner did not seek any follow-up treatment. He acknowledged having seen his family physician for other issues in the interim and not discussing this injury. He returned to work and has continued to work in his pre-injury position. He testified to a bump on the scalp and to taking over the counter medications for persistent headaches.

OPINION AND ORDER

Accident and Causal Relationship

For an accidental injury to arise out of employment, its origin must be in some risk connected with or incidental to the employment. See, e.g., *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill.2d 52, 63 (1989). While the mere act of bending over is by itself not normally indicative of increased risk, in this case, the petitioner's duties necessarily diverted his attention to a potential threat. The Arbitrator finds this did increase his risk of injury, and therefore finds a work-related accident did occur within

the meaning of the Act. The abrasion was the result of the petitioner's striking his head on the box; medical bills and nature and extent of the injury will be dealt with in their individual sections below.

Medical Expenses

The treatment incurred on June 21, 2012 appears medically appropriate. The respondent is directed to pay those medical bills pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for any and all amounts previously paid but shall hold the petitioner harmless, pursuant to 8(j) of the Act, for any group health carrier reimbursement requests for such payments.

Nature and Extent of the Injury

Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records.

Applying this standard to this claim, the Arbitrator first notes neither party submitted an AMA impairment rating. The other four factors provide the following:

1) The petitioner was a corrections officer;

2) He was 35 on the date of loss;

3) He effectively lost no time from work, and has continued to work in his usual pre-injury occupation;

4) He testified to persistent headaches, but did not seek ongoing medical care.

Considering these points and the evidence as a whole, the Arbitrator finds this to have been a minor incident. Objective studies were normal and the petitioner suffered only a minor abrasion, not a laceration or significant trauma. In view of the totality of the evidence, the Arbitrator finds no permanent disability to have been established.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

FERMIN RIVERA,

Petitioner,

14IWCC0399

vs.

NO: 10 WC 33061

LABOR SOLUTIONS,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court. Pursuant to the Circuit Court's Order dated September 12, 2013, Judge Robert Lopez Cepero found that the Commission exceeded the scope of his first remand Order dated September 26, 2012. Judge Cepero ordered the findings on causal connection in the IWCC's Decision dated January 15, 2013 stricken. This matter was remanded back to the Commission to document specifically its calculation of the medical award with a thorough explanation of the amount awarded.

In his previous Order dated September 26, 2012, the Circuit Court ordered the Commission to "document specifically its calculation of the medical award with a thorough explanation of the final order amount." In conformance with that Order, the Commission, in its Decision and Opinion on Remand dated January 15, 2013, authored a nine page decision explaining its award of the medical bills.

The Commission found that the Respondent was not liable for the EMG/NCV in the amount of $8,609.00; that Respondent was not liable for the low back physical therapy after September 3, 2010 totaling $2,112.00; that the medical bills from Medicos Pain & Surgical Specialists totaling $12,843.52 were not reasonable or necessary; and, that the non-emergency

14IWCC0399

transportation charges provided by Marque Pain & Surgical Specialists in the amount of $2,000.00 were unreasonable and unnecessary. The Commission relied upon the totality of the record and in part upon the opinions of Dr. Jesse Butler and Dr. Edward Pillar in support of its Decision.

The Commission's Decision and Opinion on Remand dated January 15, 2013 did not rely upon any new or different causal connection opinions. The opinions of Dr. Butler and Dr. Pillar were admitted into evidence and without objection during the January 3, 2011 arbitration hearing. The Commission adopted the opinions of Dr. Butler and Dr. Pillar. Those opinions were relied upon as they are an integral part of the record. The Commission therefore affirms the award from its Decision and Opinion on Remand dated January 15, 2013 and again relies upon the same opinions and evidence contained in the record.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission makes the following findings:

1. Mr. Rivera testified that he was employed with Labor Solutions (a staffing agency) for approximately four years. T.6-7. Through Labor Solutions, the Petitioner worked for CPC Laboratories performing maintenance and cleaning. T.7.

2. On June 7, 2010, the Petitioner was cleaning fluids when he slipped and fell at CPC Laboratories. T.9-10. Immediately after the accident, Petitioner completed an accident report and was taken to Concentra Medical Center. T.10.

3. According to the Concentra records, the Petitioner reported pain in his left shoulder, elbow and wrist. PX.1. While the Petitioner testified that he complained of back pain while at Concentra, the Concentra medical record indicates that Petitioner stated that he slipped and fell on his left shoulder, elbow and hurt his wrist. T.21 & PX.1. The examination revealed full range of motion of the neck. There was tenderness of the lateral aspect of the shoulder and deltoid, and normal rotator cuff motion. *Id.* X-rays of the left wrist and shoulder were negative. Mr. Rivera was given light duty restrictions and returned to work. T.11. The Petitioner testified that he was later given an assistant because he was in "bad condition." T.12. The Concentra record is silent as to complaints of injury to the back.

4. The Petitioner presented to Concentra on June 10, 2010 with continued complaints of left shoulder, elbow and wrist pain. PX.1. Examination of the shoulder revealed tenderness of the AC joint with rotation. *Id.* He was returned to regular duty. *Id.* Petitioner followed-up with Concentra on June 14, 2010 and June 16, 2010 with continued complaints of shoulder, elbow and wrist pain. *Id.* Again, the records from Concentra contain no reference of low back pain.

5. In contrast to the medical records, the Petitioner testified that during his second and third visits with Concentra, he complained of low back pain and informed the doctors he continued to be in "bad shape." T.23.

6. On June 18, 2010, Mr. Rivera presented to Concentra and noted pain in the left wrist, elbow and shoulder, and pain in the lumber region. PX.1. He denied any radiation or prior injury and his symptoms were exacerbated by flexion and lifting. *Id.* Examination of the lumbar region revealed a negative bilateral leg raise, normal sensation and tenderness of the right paraspinous muscle. *Id.* Petitioner was diagnosed with a lumbar strain, wrist contusion and shoulder strain. He was given work restrictions consisting of no lifting over 20 pounds, no bending more than 3 times per hour and no squatting, pushing or pulling. *Id.* An x-ray of the lumbar spine revealed spurs of the osteopenia. There were no fractures, subluxation, spondylolosthesis or spina bifida. However, degenerative facet arthropathy was seen. *Id.*

7. On June 25, 2010, Mr. Rivera presented to Concentra and reported that he had been working within his work restrictions. His pain was located in the anterior aspect of the left shoulder and left posterolateral aspect of the trunk. He rated his pain as a 1 out of 10. The pain did not radiate into his leg. The diagnosis was a shoulder strain, wrist contusion and contusion of the lumbar region. Petitioner was discharged from care and returned to work with no restrictions.

8. The Respondent referred Mr. Rivera to Dr. Edward Pillar of Excel Occupational Health Clinic. The Petitioner presented to Dr. Pillar on July 27, 2010 and complained of pain. T.12 and PX.2. The Petitioner provided a history of his injury and noted that he experienced pain in the left shoulder, forearm and wrist along with pain in the right low back. PX.2. Petitioner reported that he was discharged from Concentra, that therapy provided no relief and that he continued to experience pain in the left shoulder and right low back. *Id.*

9. Dr. Pillar's examination revealed a negative bilateral straight leg raise and good active range of motion in the lumbar spine with no lumbar paraspinal muscle spasms. PX.2. He had tenderness to palpation in the lumbar paraspinal musculature; however, Dr. Pillar noted Petitioner required a significant amount of encouragement to give full strength during manual muscle testing. He did not demonstrate any focal weakness around the left shoulder. *Id.* O'Brien signs were essentially negative on the left and right. Petitioner was diagnosed with persistent low back pain and a left shoulder contusion. He was allowed to continue to perform his regular work activities. *Id.*

10. Mr. Rivera presented for a follow-up visit with Dr. Pillar on August 3, 2010 with continued complaints of left shoulder pain and low back pain that radiated down his right leg. He rated his pain as 5 out of 10. PX.2. Dr. Pillar reviewed the records from Concentra and noted there were no complaints of low back pain. *Id.* Examination of the

low back showed no evidence of radiation to the leg and Dr. Pillar returned Petitioner to work without restrictions. *Id.*

11. On August 10, 2010, the Petitioner had continued complaints of left shoulder pain along with pain down the right side of his leg. PX.2. Petitioner noted physical therapy from Concentra provided very little relief. The straight leg raise examination was positive on the right and negative on the left. There were positive Waddell signs and the doctor noted complaints of "RLE pain of shoulder not withstanding negative ss (b), +biceps on L&R (denies previous shoulder injury)." *Id.* Petitioner was diagnosed with low back pain with possible lumbar radiculopathy, left shoulder pain and right shoulder weakness. Petitioner was again given no work restrictions.

12. On August 17, 2010, Mr. Rivera underwent another examination with Dr. Pillar. Dr. Pillar noted that he discussed this matter with Petitioner's physical therapist who stated that Petitioner demonstrated inconsistent findings on examination and demonstrated positive Waddell signs. The physical therapist reported that the indications suggested Petitioner was fabricating or at least exaggerating his low back pain complaints. *Id.*

13. Dr. Pillar noted that Petitioner's right and left shoulder demonstrated equal active range of motion. PX.2. The impingement signs were negative on the left. The straight leg raise was negative bilaterally in both the supine and seated position. Petitioner demonstrated full active range of motion in the lumbar spine with encouragement to give full effort. The Waddell signs were again positive with Petitioner complaining of low back pain with compression on top of his head. Dr. Pillar noted that there were no consistent objective abnormalities on examination and he demonstrated inconsistent findings on examination. Dr. Pillar could not relate any of Mr. Rivera's current complaints to the work-related injury of June 2010. *Id.* Petitioner was given no work restrictions and discharged from care. *Id.*

14. Mr. Rivera testified that he decided to go to Marque Medicos for treatment. Petitioner was examined by Sophia James, D.C. on August 30, 2010. T.26. Petitioner complained of left shoulder pain and a constant, pulsating low back pain going into the right leg down into the posterior knee. Petitioner rated his left shoulder pain as 6 out of 10. *Id.*

15. Dr. James' examination revealed some hypertnicity and tenderness of the left upper trapezius and left rhomboid. Active range of motion of the left shoulder revealed Petitioner could do flexion to 50 degrees, extension to 20 degrees and abduction to 70 degrees. PX.3. The internal and external rotation was within normal limits, but there was discomfort with external rotation. *Id.* Examination of the lumbar spine revealed active range of motion with flexion of 80/90 degrees and pain with extension of 20/30 degrees. *Id.* There was right and left rotation of 20/30 degrees with pain. *Id.* Deep tendon reflexes of the lower extremities were 2+ bilaterally. The bilateral dermatomal sensation was normal from L3 to S1 and muscle testing of the lower extremity was also within normal

limits at 5/5 bilaterally. *Id.* The x-ray of the left shoulder and lumbar spine revealed no evidence of fracture, dislocation, osseous or joint pathology. *Id.* Petitioner was diagnosed with left shoulder pain, low back pain and right lumbar spine radiculitis. He was prescribed physical therapy and an MRI of the left shoulder and lumbar spine was recommended. Directly after the examination, Dr. James opined that Mr. Rivera's accident of June 7, 2010 caused his current symptoms. *Id.*

16. An MRI of the left shoulder and lumbar spine was performed on September 3, 2010. PX.3. According to Dr. James, the MRI of the left shoulder revealed a large, full thickness tear involving portions of the infraspinatus and supraspinatus tendons. *Id.* There was a retraction to the mid portion of the humeral head and a small effusion. The MRI of the lumbar spine revealed numerous disc bulges from L2-L3 through L5-S1. Dr. James noted that the largest disc bulge at L4-L5 measured 5mm. *Id.*

17. On September 9, 2010, Mr. Rivera underwent a pain management consultation with Dr. Andrew Engel of Medicos Pain and Surgical Specialists on referral by Dr. James. PX.3. Examination revealed decreased range of motion to the left shoulder secondary to pain and full range of motion of the cervical spine. *Id.* The lumbar extension was limited secondary to pain and there was no S1 tenderness. *Id.* The straight leg was negative on the left. *Id.* An EMG was recommended and it was noted Petitioner would visit Dr. Ellis Nam, an orthopedic surgeon, for the tendon tear. In the notes, Dr. Nam recorded that the Petitioner stated that he did not want to return to work. Regardless, Dr. Nam released Petitioner to work with restrictions. Dr. Engel opined Petitioner's condition was related to his work accident.

18. An EMG study was performed on September 10, 2010. The needle examination of the right lower extremity musculature and lumbar paraspinal muscle was normal. There was no evidence of acute de-nervation of the lumbosacral nerve root and no evidence of a peripheral entrapment or polyneuropathy.

19. Petitioner met with Dr. Nam on September 13, 2010 and noted persistent pain and weakness. He described his pain as very aggressive. PX.5. Examination of the cervical spine revealed good range of motion and there was some tenderness of the left shoulder along the AC joint. *Id.* Dr. Nam reviewed the MRI findings of the left shoulder and noted a large nature of fluid, which was suggestive of acute injury. Dr. Nam recommended left shoulder arthroscopy intervention. *Id.* Dr. Nam took Petitioner off work until October 11, 2010. PX.3.

20. Petitioner underwent nine additional therapy sessions between September 14, 2010 and October 29, 2010 with Marque Medicos and Medicos Pain & Surgical Specialists.

21. Dr. David Raab performed a Section 12 examination of the left shoulder at the request of the Respondent on November 1, 2010. RX.1. Dr. Raab noted that Petitioner had a rotator

cuff tear of the left shoulder. There was evidence of retraction of the supraspinatus, subchondral cyst at the insertion of the supraspinatusm, as well as some atrophy of the supraspinatus that was indicative of chronicity of the rotator cuff tear. *Id.* He opined the tear was pre-existing and not related to the injury of June 7, 2010. *Id.* The need for surgery was not causally related to the fall and would have occurred with or without the work-related injury. *Id.* He found any work restrictions would not be related to the injury of June 7, 2010. Mr. Rivera was at MMI. *Id.*

22. Dr. Jesse Butler performed a Section 12 examination of the lumbar spine at the request of the Respondent on November 3, 2010. RX.3. Dr. Butler did not agree with the conclusion that the MRI revealed disc bulges. He noted the MRI was "remarkably" normal for Petitioner's age. *Id.* He found the back injury was not causally related to the work accident and Petitioner could return to work full-duty. *Id.* No additional physical therapy was needed as Petitioner had reached MMI and no additional care was necessary. He noted the EMG was not medically indicated and he underwent excessive physical therapy. *Id.*

23. Petitioner testified the Section 12 examination of the left shoulder lasted 30 minutes and the Section 12 examination of the low back lasted 5 minutes. T.20.

24. On November 8, 2010, Petitioner underwent an L4-L5 transforaminal epidural steroid injection, which provided minimal relief. PX.4. and T.17.

25. Petitioner testified that he continues to experience pain in his left shoulder, elbow and right side of his back along with a pulling sensation that goes down his right leg. T.11 Petitioner testified he had no previous injuries, accidents or treatment to his left shoulder, right leg or low back. T.18-19. He is still off work at the recommendation of his doctors. T.17. The physical therapy for his back was suspended, and he receives one day of therapy only for his shoulder. T.18. Petitioner rated his current back pain as 5 out of 10 and his shoulder pain as 7 out of 10. *Id.*

The Commission is not bound by the arbitrator's findings, and may properly determine the credibility of witnesses, weigh their testimony and assess the weight to be given to the evidence. *R.A. Cullinan & Sons v. Industrial Comm'n*, 216 Ill. App. 3d 1048, 1054, 575 N.E.2d 1240, 159 Ill. Dec. 180 (1991). It is the province of the Commission to weigh the evidence and draw reasonable inferences therefrom. *Niles Police Department v. Industrial Comm'n*, 83 Ill. 2d 528, 533-34, 416 N.E.2d 243, 245, 48 Ill. Dec. 212 (1981). Interpretation of medical testimony is particularly within the province of the Commission. *A. O. Smith Corp. v. Industrial Comm'n*, 51 Ill. 2d 533, 536-37, 283 N.E.2d 875, 877 (1972).

Under Section 8(a) of the Act, the claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. *University of Illinois v. Industrial*

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Comm'n, 232 Ill.App.3d 154, 164, 596 N.E.2d 823, 173 Ill.Dec 199 (1992). The claimant has the burden of proving that the medical services were necessary and the expenses incurred were reasonable. *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 534, 758 N.E.2d 18, 259 Ill. Dec. 173 (2001). Whether an incurred medical expense was reasonable and necessary and should be compensated is a question of fact for the Commission. *University of Illinois*, 232 Ill. App. 3d at 164. A decision must be supported by facts contained in the record and not based on mere speculation or conjecture. *Illinois Bell Telephone Company v. Industrial Comm'n*, 265 Ill. App. 3d 681, 638 N.E.2d 307 (1994).

It is the function of the Commission to resolve disputed questions of fact and evidentiary conflicts. *Spector Freight Systems v. Industrial Comm.*, 93 Ill.2d 507 (1983). In deciding such conflicts, it is well established that the Commission has the authority to draw reasonable inferences from both direct and circumstantial evidence. *County of Cook v. Industrial Commission*, 69 Ill.2d 10, 12 (1977).

The Commission adopts the Decision of the Arbitrator concluding that Mr. Rivera's left shoulder injury was caused by the work accident. Therefore, the Commission affirms the award of TTD, unpaid medical bills and prospective medical as it relates to the left shoulder injury.

However, with regard to the low back injury, the Commission finds that the evidence demonstrated that Petitioner sustained a lumbar strain only as the result of his work-related accident. When Petitioner first sought treatment, the medical records contained no mention of a back injury. Before June 18, 2010, despite the fact that Petitioner was treated several times for the shoulder injury, there was no documented low back complaint.

Petitioner's own physical therapist found inconsistent findings as well as positive Waddell findings. He noted the Petitioner was exaggerating his lower back complaints on August 17, 2010. The physical therapist noted that additional physical therapy would be of limited benefit to Petitioner.

Dr. Butler reviewed the August 31, 2010 x-ray and the September 3, 2010 lumbar MRI. He noted it showed no evidence of disc herniation or stenosis and it was "remarkably" normal. Dr. Butler found no disc bulges and did not agree with the finding of a 3mm to 5mm disc bulge. Dr. Butler opined that no treatment was indicated, no condition of ill-being was related to his accident, additional physical therapy was not needed, and Petitioner was at MMI. Dr. Butler opined the Petitioner had excessive physical therapy, and no objective evidence indicated a need for the EMG/NCV.

The EMG was not reasonable and necessary as there is no medical evidence indicating a need for the EMG. This is corroborated by the fact that the EMG was normal and revealed no evidence of acute de-nervation of the lumbosacral nerve root, and no evidence of a peripheral entrapment or polyneuropathy. The lack of objective medical evidence in the records coupled with the negative x-ray and MRI, the positive Waddell findings, the opinion that the Petitioner

exaggerated his low back complaints as noted by the therapist, and the opinions of Dr. Butler and Dr. Pillar cause the Commission to conclude that the EMG/NCV performed on September 10, 2010 was unreasonable and not medically necessary. Therefore, the Respondent is not liable for payment of the EMG/NCV in the amount of $8,609.00.

According to the medical records, the Petitioner received physical therapy for his back and shoulder from August 30, 2010 through September 20, 2010 and also on October 8, 2010, October 27, 2010, November 1, 2010 and November 9, 2010. Petitioner failed to demonstrate sufficient credible evidence to support that continued physical therapy after September 3, 2010 was reasonable and necessary. Petitioner's statement to Dr. Nam that he did not want to return to work, the positive Waddell signs during examination on August 17, 2010, the therapist notes that he was exaggerating his symptoms, the normal x-rays and normal MRI combined with the opinions of Dr. Butler and Dr. Pillar all indicate that medical treatment after September 3, 2010 was not necessary. The Commission finds that the physical therapy to the back after September 3, 2010 was excessive and unreasonable. The Commission finds that the Respondent is not liable for the low back physical therapy after September 3, 2010 totaling $2,112.00.

The Commission further finds that based on the lack of objective medical evidence in the records, the negative x-ray and MRI, the positive Waddell findings, the opinion that the Petitioner exaggerated his low back complaints, and the opinions of Dr. Butler and Dr. Pillar, the treatment received from Medicos Pain & Surgical Specialists totaling $12,843.52 was unreasonable and not medically necessary. Therefore, the Commission finds that the Respondent is not liable for those payments totaling $12,843.52.

The Commission also finds that the non-emergency transportation provided by Marque Pain & Surgical Specialists was unreasonable. The Commission therefore finds that the Respondent is not liable for those payments totaling $2,000.00.

The Commission finds that the Respondent is liable for the medical bills from Dr. Nam totaling $501.00, Archer MRI totaling $3,106.00, Specialized Radiology Consultants totaling $115.00, and Marque Medicos totaling $5,154.00.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $245.33 per week for a period of 16 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $8,876.00 for medical expenses under §8(a) of the Act and subject to the medical fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay for prospective medical care, specifically left shoulder arthroscopy, subacromial decompression, and rotator cuff repair along with all related benefits.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $12,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 30 2014

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

MJB/tdm
O: 5-6-14
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STATE OF ILLINOIS)
) SS.
COUNTY OF LA SALLE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jeff Hickman,

Petitioner,

14IWCC0400

vs.

NO: 07 WC 56155

HCR Manor Care Normal #401,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on Remand from the Circuit Court of Illinois. The Circuit Court vacated the Commission's Decision vacating the Arbitrator's award of benefits. Timely Petition for Review having been filed by the parties herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, medical expenses, prospective medical care, credit due Respondent, and evidentiary issues, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

This matter was originally tried before Arbitrator Falcioni on September 11, 2008 as a 19(b) hearing. Arbitrator Falcioni issued his decision on September 22, 2008, finding that Petitioner suffered a work-related injury and awarded temporary total disability benefits and medical expenses. Respondent filed a Petition for Review. On October 7, 2009 the Commission found that Petitioner's failure to provide his Social Security Disability records and refusal to sign a consent form releasing the Social Security Disability records to Respondent was sufficient to

14IWCC0400

infer that the Social Security Disability records most likely contained information unfavorable to Petitioner and inconsistent with the Arbitrator's finding that Petitioner suffered an aggravation of his pre-existing conditions on August 20, 2007. The Commission remanded the case back to the Arbitrator for further proceedings to allow Petitioner the opportunity to provide the Social Security records.

Petitioner appealed the Commission Decision to the Circuit Court. On June 25, 2010, Circuit Court Judge Scott Drazewski remanded the case back to the Arbitrator with instructions for "Petitioner-Appellant to either provide the prior Social Security Disability records, or, if Petitioner continues to refuse to provide the records, then the Arbitrator will render a new decision that takes this refusal into account."

The matter was heard on remand before Arbitrator Falcioni on March 21, 2013. Petitioner's then available Social Security Disability records were entered into evidence, as was the original record of the September 11, 2008 hearing. Petitioner's counsel explained, and Respondent's counsel agreed, that the parties were proceeding "on the previous 19(b) decision for the medical and TTD accrued through the date of arbitration on 9/11/08 only. Those are the only issues up on review. We want to preserve all appeal rights with the original decision. We want to preserve our right to TTD, medical and permanency after the 9/11/08 decision to be decided at a later date." (T.8)

After reviewing the Social Security Disability records entered into evidence, the Arbitrator determined in his April 2, 2013 decision that "no new relevant evidence... [was] produced through the Social Security record which would affect [the Arbitrator's] opinions of causation on Petitioner's left knee, cervical area, or SI joint problems." The Arbitrator re-issued his original September 22, 2008 decision finding that Petitioner suffered an aggravation of his pre-existing left knee, low back and SI joint, and cervical spine conditions on August 20, 2007 and that his conditions were all causally related to the August 20, 2007 accident. The Arbitrator reinstated his original awards of temporary total disability benefits and medical expenses.

The Commission notes, as did the Arbitrator, that the Social Security Disability records that were produced include almost all of the same medical records provided at the original September 11, 2008 hearing. Most of the additional records released by the Social Security Administration that were not provided at the September 11, 2008 hearing dealt with unrelated medical issues and/or mentioned that Petitioner suffered from ongoing left knee, neck and low back issues prior to the August 20, 2007 accident, a fact that had been established with the medical records that had been originally provided at the September 11, 2008 hearing. Therefore, the Commission agrees with the Arbitrator that there was "no adverse new information" in the Social Security Disability records that were received. The Commission notes that the complete Social Security Disability record is no longer available. (PX20)

After reviewing and considering the Social Security Disability records that were produced and the evidence provided at the original September 11, 2008 hearing, the Commission finds that Petitioner suffered a temporary aggravation of his pre-existing conditions and that the aggravation had resolved by October 20, 2007.

Petitioner suffered from left knee, low back and cervical problems prior to the August 20, 2007 undisputed accident. The Commission notes that on March 28, 2007, Dr. Benyamin administered an interlaminar cervical epidural steroid injection due to Petitioner's ongoing cervical pain (PX30—PX9) and on August 5, 2007, Petitioner got a refill for Oxycodone due to ongoing low back pain and spasms. (PX30—T.42) The Commission further notes that Petitioner was working without restrictions even with is ongoing problems and that Dr. Benyamin noted that Petitioner was "functioning well with medication and injections." (PX30—PX9)

Following the August 20, 2007 accident, Petitioner complained of left knee, low back and neck pain. The Commission notes that Petitioner underwent SI and left knee injections, which he had not undergone for some time, after the accident. (PX30—PX6 & RX14) Petitioner also continued to undergo cervical injections (PX30—PX9) and underwent a course of physical therapy (PX30—RX10). Petitioner stopped attending physical therapy after October 31, 2007. (PX30—RX10) The physical therapy records show that on November 26, 2007, the physical therapist noted that Petitioner had put physical therapy on hold and stopped attending therapy. (PX30—RX10). The Commission notes that after undergoing conservative treatment after the August 20, 2007 accident, by October 20, 2007, Petitioner's overall complaints were basically the same complaints he had prior to the August 20, 2007 accident. (PX30—PX6, PX7 & RX10)

Regarding Petitioner's cervical condition, the Commission notes the cervical spine MRI taken on April 15, 2002, showed interval increase in the degenerative intervertebral disc space disease since May 19, 2000, broad-based central herniated disc protrusion at C3-4 which has increased since May 19, 2000, a large right central and foraminal herniated disc extrusion at C5-6 with compressive changes upon the cervical dural sac, moderate spinal stenosis and narrowing and compromise of the right C5-6 neural foramen, increase in the size of the broad-based central herniated disc protrusion at C6-7, and mild spinal stenosis at C6-7 which has increased since May 19, 2000. (PX30—PX7) The December 4, 2004, cervical MRI showed evidence of anterior fusion with metallic plate and screws at C5 through C7 and degeneration and minimal bulging of the annulus at C3-4. (PX30—PX4) The October 24, 2005, cervical MRI showed satisfactory appearance of anterior cervical fusion from C5 to C7, and slight narrowing of the intervertebral disc at C3-4 degenerative in nature. (PX30—PX5) And finally, the cervical MRI taken on October 23, 2007, after the accident, showed satisfactory appearance of anterior cervical fusion from C5 to C7 and suggestion of mild to moderate broad-based central and slightly left paracentral disc herniation at C3-4 level resulting in mild to moderate central stenosis without cord impingement. (PX30—PX3)

On March 3, 2008, Respondent's Section 12 examiner, Dr. Steven Delheimer, noted that the cervical MRI reports from 2002 and 2007 "were clinically unchanged and showed no objective evidence that the incident of August 20, 2007 aggravated or accelerated the pre-existing condition." (PX30—PX15) Dr. Delheimer found that what Petitioner suffered on August 20, 2007, was a soft tissue injury to the cervical spine which would have resolved in eight weeks. Dr. Delheimer also found that any ongoing symptoms after the eight week period were attributable to Petitioner's pre-existing degenerative cervical condition.

In reference to Petitioner's lumbar condition, Dr. Delheimer explained that Petitioner's pain was "unsubstantiated by any type of objective finding. The examination today showed the

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movements of his back and his gait to be significantly different from what I observed on the video surveillance tapes." (PX30—PX15) Dr. Delheimer opined that Petitioner did not sustain any lumbar injury on August 20, 2007 and explained that "regardless of the incident of August 20, 2007 there has been no aggravation, acceleration, or exacerbation of the pre-existing lumbar condition. Furthermore, any treatment to the lumbar spine following the incident of August 20, 2007 would be related to [Petitioner's] underlying degenerative disc disease." Dr. Delheimer felt Petitioner had reached maximum medical improvement regarding the August 20, 2007, accident and could return to work without restrictions.

Regarding his left knee condition, Petitioner was asked to see Dr. Lawrence Li, another Section 12 examiner for Respondent. (PX3—RX19) In his report, issued on March 3, 2008, Dr. Li diagnosed Petitioner as having significant underlying arthritis with an acute aggravation and explained that Petitioner's left knee "symptoms are pre-existing and were brought and temporarily aggravated by his work injury....I believe any aggravation of his underlying condition was temporary and would have resolved over a matter of one to two months....I believe that the treatment provided with the exception of the synvisc injections was related to the August 20, 2007 injury. The synvisc injections were for his underlying condition." Dr. Li did not feel Petitioner required a total knee replacement and that Petitioner had reached maximum medical improvement from the August 20, 2007 accident.

The Commission notes that Dr. Delheimer issued a second report on April 11, 2008, after reviewing Dr. Benyamin's records and found that Petitioner did not sustain a cervical injury on August 20, 2007, noting Petitioner's "significant history of prior neck complaints" and treatment just two weeks before the accident. (PX30—PX16 & RX21) Dr. Delheimer also changed his opinion regarding Petitioner's lumbar condition and found that "at worst" Petitioner suffered a soft tissue lumbosacral strain on August 20, 2007. The Commission finds this second report less persuasive than his first since the records from Dr. Benyamin failed to provide any significantly new information to Dr. Delheimer. Dr. Delheimer was already aware that Petitioner had a pre-existing cervical condition and that he had been treating periodically and taking medication for this pre-existing condition after reviewing Petitioner's other medical records when he issued his first report.

The Commission relies on the findings and opinions of Dr. Delheimer and Dr. Li and notes that both doctors reviewed not only Petitioner's medical records but the surveillance videos, as well. The Commission notes that the videos, all taken after October 1, 2007 (PX30—RX1), show Petitioner moving around and bending without difficulty. The Commission further notes that the surveillance videos fail to show Petitioner limping, a condition which Petitioner's former co-worker, Debra Garrells, and Dr. Steven Vincent, who conducted a psychological examination of Petitioner on September 25, 2007 for Petitioner's Social Security Disability claim, noted after the August 20, 2007 accident. (PX30—T.48-49, RX33)

Regarding the testimony of Debra Garrells, the Commission notes that during cross-examination, she admitted that Petitioner stayed with her following the accident, an action that indicates that she and Petitioner appeared to have more than a working relationship and leads the Commission to question her credibility in this matter. (PX30—T.49-50)

Based on the medical records, the Section 12 examination reports from Dr. Delheimer and Dr. Li, and the surveillance videos, the Commission finds that the limping Petitioner exhibited on September 25, 2007, had resolved by October 20, 2007, since the surveillance video taken in October 2007 showed Petitioner moving about, without a limp, as well as bending, stooping, walking and getting in and out of cars without difficulty. (PX30—RX1) The Commission finds that the surveillance videos show that Petitioner had returned to his functional, pre-accident state.

Therefore, based on a complete review of the entire record, the Commission finds that Petitioner suffered a temporary aggravation of his pre-existing left knee, low back and cervical spine conditions during the August 20, 2007, undisputed accident. The Commission further finds that the aggravations had resolved by October 20, 2007. The Commission finds that Petitioner is entitled to temporary total disability benefits from August 23, 2007 through October 20, 2007. The Commission further finds that Petitioner is entitled to medical expenses through October 20, 2007, per the fee schedule, and to a reimbursement of $46.29 for medications paid out-of-pocket through October 20, 2007 by Petitioner.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on April 2, 2013, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $604.29 per week for a period of 8-3/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $7,790.50 for medical expenses under §8(a) and 8.2 of the Act, and $46.29 as re-imbursement for out-of-pocket medication payments.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit

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for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court by Petitioner. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAY 30 2014
MJB/ell
o-05/06/14
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Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0400

HICKMAN, JEFF
Employee/Petitioner

Case# **07WC056155**

HCR MANORCARE NORMAL #401
Employer/Respondent

On 4/2/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0564 WILLIAMS & SWEE LTD
JAN SWEE
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

2542 BRYCE DOWNEY & LENKOV LLC
JUSTIN NESTOR
200 N LASALLE ST SUITE 2700
CHICAGO, IL 60601

14IWCC0400

STATE OF ILLINOIS)
)SS.
COUNTY OF Peoria)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [ ] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jeff Hickman
Employee/Petitioner

v.

HCR ManorCare Normal #401
Employer/Respondent

Case # **07** WC **56155**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Robert Falcioni**, Arbitrator of the Commission, in the city of **Ottawa**, on **3-21-13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [ ] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [x] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [ ] Is Petitioner entitled to any prospective medical care?
L. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
M. [x] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On the date of accident, **8-20-07**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$2578.88**; the average weekly wage was **$906.43**.

On the date of accident, Petitioner was **49** years of age, ***single*** with **1** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$11136.21** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$11,136.21**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Credits

Respondent shall be given a credit of **$11,136.21** for TTD, **$0** for TPD, and **$0** for maintenance benefits, for a total credit of **$0**.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $604.29/week for 54 5/7 weeks, commencing 8-23-07 through 9-11-08, as provided in Section 8(b) of the Act.

Medical benefits

Respondent shall pay reasonable and necessary medical services of $5008.82 and $8157.00 to Millennium Pain Center, $1666.72 to McLean County Orthopedics, $255.90 to Clinton Internal Medicine, $423.00 to Central Illinois Neurohealth Sciences, $2797.43 to Diagnostic Neuro Technology, $17,197.81 to BroMenn, $2625.13 to Anesthesia Consultants, $800.06 to RX Third Party, $441.23 to Bloomington Radiology, and $5330.69 to John Warner Hospital.

In addition, Respondent is ordered to re-pay Medicare in the amount of $3655.26, and to reimburse Petitioner in the amount of $111.08.

Penalties

Respondent shall pay to Petitioner penalties of **$0**, as provided in Section 16 of the Act, Section 19(k) of the Act, and Section 19(l) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

March 28, 2013
Date

ICArbDec19(b)

APR 2 - 2013

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

This case was previously tried as a 19(b) hearing before Arbitrator Robert Falcioni on 9-11-08. In a 9-22-08 decision, Arbitrator Falcioni awarded TTD for 54 5/7 weeks, from 8-23-07 through the date of hearing on 9-11-08; payment of medicals in the amount of $44,703.79; reimbursement to Medicare in the amount of $3655.26 and reimbursement to Petitioner in the amount of $111.08.

In his 9-22-08 decision, the Arbitrator found that, although Petitioner had a previous left knee condition from a work accident in 1997, which included an osteotomy on 3-3-98 and subsequent medical care, Petitioner sustained a significant aggravation of his pre-existing arthritis as a result of his work accident on 8-20-07 and that his current condition, with resulting disability, is causally related to his work accident. The Arbitrator found that, although Petitioner had undergone a cervical fusion at C5-6 and C6-7 on 5-21-02 and had some ongoing medical care to his cervical area, the 8-20-07 work accident aggravated Petitioner's cervical condition (with subsequent left radicular pain), contributing to the need for Petitioner's cervical surgery on 12-19-07 consisting of a posterior cervical foraminotomy at the C3-4 level. The Arbitrator further found that Petitioner's work accident aggravated a pre-existing SI joint. The Arbitrator stated that Petitioner's work accident contributed to his current temporary total disability (PX 27, p.p. 6, 7 of decision).

In his 9-22-08 decision, the Arbitrator stated: "The Arbitrator specifically wishes to stress that although Petitioner has varying degrees of degenerative conditions ongoing in the body parts that are the subject of this claim at the time of the accident alleged herein, he was in fact working full duty at a job that required heavy lifting and was able to do said job. Further, it does not appear from the voluminous medical record introduced by both Respondent and Petitioner that as of the date of accident, any medical provider had recommended any of the surgeries that Petitioner subsequently underwent (PX 27, p. 7)."

Petitioner had been receiving Social Security Disability benefits since 2001. Prior to arbitrating this case on 9-11-08, Respondent's counsel asked Petitioner to sign a release so Respondent could obtain Petitioner's Social Security file. Petitioner did not sign the release.

Respondent, HCR Manor Care Normal #401, reviewed this decision before the Workers' Compensation Commission. In a 10-7-09 decision, the Commission vacated the Arbitrator's decision

and remanded the case back to the Arbitrator for a new decision which would include consideration of Petitioner's Social Security.

The Commission found that, pursuant to *ReoMovers, Inc. v IIC*, 226 Ill.App.3d 216, 589 N.E.2d 704, 168 Ill.Dec. 304 (1st Dist. 1992), "where a party fails to produce evidence in his control, the presumption arises that the evidence would be adverse to that party. As such, we find that Petitioner's unwillingness to release those records is sufficient to find that those records would most likely reflect information that is unfavorable to Petitioner. Specifically, the records most likely contain information inconsistent with a finding that Petitioner aggravated any of his pre-existing conditions," (PX 28, p.p. 2, 3).

The Commission stated that because Petitioner refused to release his SSD records, there is very little information regarding what Petitioner's conditions of ill-being were, what his "baseline conditions" might be, and what the terms of his "back to work" program were. The Commission stated that "This information is extremely relevant to Petitioner's claim of an aggravation of pre-existing conditions and the evidence in the record of Petitioner working for a month, after being on disability for the better part of six years, does not prove that Petitioner was capable of full duty work prior to this injury," (PX 28, p. 2).

The Commission also found:

"Based upon Petitioner's failure to provide the prior Social Security Disability records, which we find are very relevant to Petitioner's claim, we hereby vacate the Arbitrator's decision and remand this case back to the Arbitrator for further proceedings to allow Petitioner the opportunity to provide those records. The Arbitrator shall issue a new decision following careful consideration of those records and which is consistent with our Decision on Review. If Petitioner continues to refuse to provide them, then the Arbitrator is instructed to issue a new decision that takes this refusal into account as discussed above," (PX 28, p. 3).

Petitioner appealed to the Circuit Court. In a 6-25-10 decision, Judge Scott Drazewski remanded the case back to the Arbitrator for further instructions for Petitioner-Appellant to either provide the prior Social Security Disability records, or, if Petitioner continues to refuse to provide them, then the Arbitrator will render a new decision which takes the refusal into account (PX 29).

At the arbitration remandment hearing on 3-21-13, the parties stipulated that the hearing was limited to the same issues as presented at the previous 19(b) hearing which include TTD, medical, penalties and causal connection through 9-11-08.

The Arbitrator finds that, based on the Commission's decision and Judge Drazewski's decision, the focus of this remandment are:

1. Did Petitioner comply with both the Respondent's request and the Commission's Order to produce his Social Security Disability records at arbitration on 3-21-13?

2. Do the Social Security records provide adverse new information that would affect the Arbitrator's 9-22-08 decision finding that Petitioner's accident of 8-23-07 caused an aggravation of a pre-existing cervical, SI and left knee condition which contributed to Petitioner's temporary total disability from 8-23-07 through 9-11-08 and the need for medical care?

1. DID PETITIONER COMPLY WITH RESPONDENT'S REQUEST AND THE COMMISSION'S ORDER TO PRODUCE HIS SOCIAL SECURITY RECORDS AT ARBITRATION ON 3-21-13?

Prior to Arbitration on 9-11-08, Respondent requested that Petitioner sign a release so it could obtain Petitioner's Social Security records.

At arbitration on 3-21-13, Petitioner testified, and the records reflect, that Petitioner signed a Social Security Consent for Release of Information for Respondent on 6-7-10 (PX 1, RX 30) and 12-15-10 (PX 2, RX 31). Respondent subpoenaed Petitioner's Social Security records on 6-18-10 and 10-31-10 (RX 32, RX 34, PX 7). Respondent hired Gould & Lamb, a Medicare vendor, to evaluate Petitioner's claim and Petitioner signed a release and appointment of representation for Gould & Lamb on 12-15-10. Petitioner's counsel expressed a willingness to work with Gould and Lamb and asked them to contact her in correspondence to Respondent dated 8-19-11 (PX 9, RX 37).

Petitioner and his counsel also attempted to obtain Petitioner's Social Security records. Petitioner signed an Appointment of Representation for his attorney and Petitioner's counsel requested the Social Security records on 4-20-11 (PX 5). Petitioner signed an SSA-1696 Form and Petitioner's counsel re-requested the file on 6-15-11 (PX 6). In addition, Petitioner testified that he drove to the Springfield Social Security office to try to obtain his Social Security file (see also PX 21, RX 40, RX 41). Petitioner produced these records obtained from these inquiries as exhibits at arbitration on 3-21-13 (PX 13, 14, 15, 16, 18, 19, 20, 24, 25, and 26). Respondent produced these records at arbitration on 3-21-13 (RX 33, 37, 38, 41, 43, 45).

Petitioner's counsel requested a copy of the original decision from the Social Security Administration in Bloomington, Illinois on 5-3-12 and received a notice from Social Security stating that they were unable to process the request for a copy of the original decision and medical records as the file had been destroyed (RX 43, PX 20).

The Arbitrator finds that to the best of his ability, Petitioner has complied with the Commission's order to produce his Social Security file. The Arbitrator also finds that Petitioner has complied with Respondent's request that Petitioner sign a release so that Respondent could obtain Petitioner's Social Security file.

2. DO THE SOCIAL SECURITY RECORDS PROVDE ADVERSE NEW INFORMATION THAT WOULD AFFECT THE ARBITRATOR'S 9-22-08 DECISION FINDING THAT PETITIONER'S ACCIDENT OF 8-23-07 CAUSED AN AGGRAVATION OF A PRE-EXISTING CERVICAL, SI AND LEFT KNEE CONDITION WHICH CONTRIBUTED TO PETITIONER'S TEMPORARY TOTAL DISABILITY AND NEED FOR MEDICAL CARE?

In reviewing the Social Security records which both parties received from the Social Security Administration, the Arbitrator finds that Respondent had more medical records on Petitioner (which dated back to 1997) at the initial arbitration on 9-11-08 than the Social Security Administration had in its file.

The medical records contained in the Social Security records procured by Respondent and Petitioner's counsel (PX 13, 14, 19, RX 33, 37, and 45) contain records from Millennium Pain Center (these were provided at the 9-11-08 arbitration in PX 9 and RX 14); Clinton Internal Medicine (these

were provided at the 9-11-08 arbitration in RX 5 and PX 7), Prairie Cardiovascular (these were provided at the 9-11-08 arbitration in RX 15); BroMenn Hospital records (these were provided at the 9-11-08 arbitration contained in RX 12 and PX 6); Dr. Fletcher's records (these were provided at the 9-11-08 arbitration contained in RX 16). The only treating medical records that Social Security had that Respondent did not introduce on 9-11-08 is records relating to a colonoscopy of 3-22-06 and treatment for gastritis.

Respondent provided significantly more records than Social Security had in its possession. Records that Respondent produced at the 9-11-08 arbitration which were not contained in the Social Security file were: records from Carle Clinic from 1998 to 2008; Central Illinois Neuro Health Sciences from 2002 through 2008; Clinton Chiropractic from 2002 through 2008; records from Dr. Dold from 1997 through 2008; records from Dr. Herrin from 1997 through 2008; records from Dr. Hon from 1997 through 2008; records from Dr. McIlhaney from 1997 through 2008; and records from Springfield Neurosurgical Associates (Dr. Pencek) from 1997 through 2008. The records that Respondent produced on 9-11-08 included treatment for Petitioner's pre-existing knee, low back and cervical area.

The Social Security records contain a few additional reports and records that were not introduced at arbitration on 9-11-08. These were reports generated by Social Security doctors and include a 3-31-99 report from Dr. McCracken. Dr. McCracken did not examine Petitioner, but filled out a form stating that Petitioner had low back and left knee pain and he would be restricted to 20 pound lifting with a 6 to 8 hour work day (PX 13). The Social Security records include a 3-8-99 report from Dr. Atluri who stated that Petitioner had degenerative joint disease, lumbosacral disc prolapse, left knee arthritis, depression, CAD, and high blood pressure (PX 13). The Social Security records also contain a psychological report from Dr. Forbes dated 3-2-99 which diagnosed Petitioner as having clinical depression as a result of pain and inability to work. Dr. Forbes stated that Petitioner had the ability to understand and carry out instructions and that he may have problems with work pressures (PX 13). In an OMB form, 0960-0413, a person by the name of Addia White stated that Petitioner met the listing for affective disorders, depression as a result of the pain on 3-29-99 (contained in PX 13). The Social Security records also include a psychological evaluation performed by Dr. Stephen Vincent, a licensed clinical psychologist, on 9-25-07. Dr. Vincent stated that Social Security asked him to do a mental status examination of Petitioner. Dr. Vincent stated that Petitioner was moderately depressed and his thought processes were slow and deliberate yet logical. Dr. Vincent stated that Petitioner had a long history of depression with ongoing symptoms and signs of depression with exacerbation given multiple medical problems,

particularly with his breathing difficulties, chronic neck and back pain, and bilateral knee pain with left being worse than right (contained in PX 13, RX 33).

The Arbitrator notes that Petitioner filled out a disability form on 12-12-98 stating that he had low back pain, left hip and leg pain, and depression (PX 13). The Arbitrator notes that Petitioner filled out a form on 10-1-07 for Social Security stating that pain limits his ADLs, that it affects his memory, that he has pain and spasms (PX 14).

After reviewing the Social Security records that both parties produced at arbitration on 3-21-13 and comparing them to the records produced at arbitration on 9-11-08, the Arbitrator finds that there is no adverse new information which would affect the Arbitrator's 9-22-08 decision finding that the 8-23-07 accident caused an aggravation of a pre-existing cervical, SI and left knee condition which contributed to Petitioner's temporary total disability and need for medical care. The Arbitrator finds that he had the relevant past medical treatment records at arbitration to make a determination of causal connection, temporary total disability and penalties.

F. IS PETITIONER'S CURRENT CONDITION OF ILL BEING CAUSALLY RELATED TO THE INJURY?

The Arbitrator finds that no new relevant evidence was produced through the Social Security record which would affect his opinions of causation on Petitioner's left knee, cervical area, or SI joint problems. The Arbitrator notes that the medical records, with the exception of the forms generated by a Social Security doctor evaluating the records, were available to the Arbitrator at arbitration on 9-11-08.

The Arbitrator therefore restates and reiterates his findings on causal connection in his 9-22-08 decision as follows:

Petitioner testified that he was employed as a registered nurse for Respondent, a nursing home, on 8-20-07. Petitioner testified that on that date, a resident began to fall out of his wheelchair and Petitioner caught him from behind. Petitioner said that, as he caught the resident, his right foot hooked on the resident's wheelchair and he twisted his left knee. Petitioner said that the resident weighed approximately 210 pounds and was over 6 foot tall. Petitioner said that after this incident, he noticed immediate left knee, low back and SI pain as well as neck pain into his left shoulder.

Petitioner filled out an incident form on 8-20-07 which described an incident consistent with his testimony. The incident form states that Petitioner had left knee, low back and SI pain (PX 23).

Petitioner treated with Dr. Benyamin, a pain specialist, on 8-23-07. Dr. Benyamin recorded a history of accident consistent with Petitioner's testimony. Dr. Benyamin's record of 8-23-07 states that Petitioner sprained his left knee and injured his low back and SI joint. The record also states that Petitioner had "DDD-spurring-neck." Petitioner testified, and Dr. Benyamin's record indicates, that Petitioner informed Dr. Benyamin of his neck, left knee and back pain in a pain diagram that Petitioner filled out when he met with Dr. Benyamin on 8-23-07 (PX 9).

Dr. Benyamin took an x-ray of Petitioner's left knee and injected his SI joint on 8-23-07. Dr. Benyamin performed an SI joint injection on 9-5-07. On 9-26-07, Dr. Benyamin stated that Petitioner had neck pain with muscle spasm as well as low back and left knee pain (PX 9, 9-26-07 entry).

Petitioner treated with his family physician, Dr. Williams, on 10-5-07. Dr. Williams took a history of Petitioner reinjuring himself at work trying to keep someone from falling over (PX 7). Dr. Williams ordered an MRI of Petitioner's cervical area on 10-23-07. The radiologist, Dr. Yousuf, stated that Petitioner had a satisfactory appearance of a previous fusion from the C5 to C7 level and that there was a suggestion of a mild to moderate broad-based central and slightly left paracentral disc herniation at the C3-4 level resulting in mild to moderate central stenosis without cord impingement. Dr. Yousuf stated that the left neural foramen was narrowed and may produce left C4 symptoms (PX 3).

Dr. Williams referred Petitioner to Dr. Kattner, a neurosurgeon who had previously treated Petitioner, on 11-19-07. Dr. Kattner's record on that date states that Petitioner had a previous cervical fusion at C5-6 and C6-7 in 2002. Dr. Kattner's record on 11-19-07 states that Petitioner presented with symptoms that began on 8-20-07 when Petitioner was helping a patient out of a wheelchair and developed left knee and neck pain that radiated into Petitioner's left shoulder and left hand (PX 11). Dr. Kattner performed surgery on Petitioner's cervical area on 12-19-07 consisting of a posterior cervical foraminotomy at C3-4 (PX 12).

As it relates to Petitioner's left knee, Dr. Benyamin referred Petitioner to Dr. Bratberg, Petitioner's treating orthopedic surgeon, on 9-27-07. Dr. Bratberg recorded a history of accident consistent with

Petitioner's testimony. Dr. Bratberg stated on 9-27-07 that Petitioner's 8-20-07 accident was a twisting type of injury to his left knee and that Petitioner had been quite uncomfortable since that time. Dr. Bratberg stated that Petitioner also injured his sacroiliac in the accident (PX 6).

Upon exam on 9-27-07, Dr. Bratberg stated that Petitioner had some crepitation with flexion in the patellar region and that he had pain and tenderness along the medial joint line in his left knee. Dr. Bratberg stated that an x-ray taken on 9-27-07 showed 90% loss of the medial joint space. Dr. Bratberg's record indicates that Petitioner had a tibial osteotomy for osteoarthritis of the medial compartment nine years ago, but he had done fairly well prior to his recent injury at work (PX 6).

Dr. Bratberg injected Petitioner's left knee with depromedrol and Marcaine on 9-27-07. Dr. Bratberg performed a synvisc injection on 12-6-07, 12-13-07 and 12-17-07 (PX 6).

In a 1-23-08 report, Dr. Bratberg stated that Petitioner had osteoarthritis in his left knee for a considerable period of time, but he was functioning reasonably well until an episode where Petitioner caught a patient falling out of a wheelchair. Dr. Bratberg opined that Petitioner aggravated the arthritic condition in his left knee at the time of the accident (PX 2).

Respondent's examining physician, Dr. Li, stated in a 2-5-08 report that he examined Petitioner and that he reviewed medical records. Dr. Li concluded that Petitioner had a significant underlying arthritis with an acute aggravation during his work accident. Dr. Li stated that Petitioner's current left leg condition may have had some aggravation from the work accident, but the underlying pathology was so significant that the current symptoms mostly pre-existed. Dr. Li stated that he reviewed some surveillance tapes (RX 1) and some concluded that Petitioner did not need a total knee replacement. Dr. Li opined that Petitioner's work accident of 8-20-07 was a temporary aggravation of his left knee arthritis (RX 19).

Petitioner testified that prior to 8-20-07, he had treatment to his left knee from a work accident beginning in 1997. The records reflect that Dr. Bratberg performed surgery on 9-23-97 to remove multiple loose bodies in Petitioner's left knee; that he performed an osteotomy of Petitioner's left proximal tibia with segmental osteotomy of the fibula on 3-3-98; and he performed surgery on 3-30-99 to remove the staples from Petitioner's left knee with a partial medial meniscectomy and shaving of the femur at the patellofemoral joint (RX 9, 12). The records reflect that Petitioner treated nonoperatively

with Dr. Bratberg in 2002 for his left knee and that he did not treat with Dr. Bratberg again until 9-27-07 although he did report symptoms of left knee pain to Dr. Benyamin on 2-5-07 and Dr. Lam on 6-8-07. At that time, he treated with Dr. Bratberg for symptoms of increased left knee pain after his 8-20-07 accident (PX 6, RX 12).

Petitioner testified that his left knee was relatively asymptomatic prior to his 8-20-07 accident. Petitioner testified that prior to 8-20-07 he was able to do all of his job functions as a nurse for a nursing home without any difficulties with his left knee and that his job was very physical and required a lot of walking. Petitioner testified that after his 8-20-07 accident, his knee pain increased and became constant. Dr. Bratberg's records reflect that Petitioner's treatment has been consistent since his 8-20-07 work accident (PX 6, PX 22). On 3-17-08, Dr. Bratberg stated that Petitioner would have difficulty continuing his current nursing duties without severe restrictions (PX 6). Dr. Bratberg performed injections to Petitioner's left knee on 5-7-08 and 7-30-08 and kept Petitioner off work for his left knee (PX 22).

The Arbitrator therefore finds that Petitioner's current left knee condition, and resulting disability, is causally related to his 8-20-07 work accident. The Arbitrator finds that Petitioner sustained a significant aggravation of his pre-existing arthritis as a result of his work accident.

The Arbitrator also finds that Petitioner aggravated his low back and SI joint as a result of his 8-20-07 accident. The Arbitrator finds that, consistent with the medical records presented at arbitration (RX 2, RX 6, RX 7, RX 9, RX 10, RX 11, RX 17, RX 18) and Petitioner's testimony, Petitioner had a pre-existing lumbar condition, which required surgical procedures in the 1990s, and left him with a degenerative condition at several levels in his lumbar spine. The Arbitrator finds that the 8-20-07 work accident aggravated Petitioner's degenerative low back condition and that it aggravated his SI joint pain.

The Arbitrator further finds that Petitioner's work accident of 8-20-07 contributed to the need for Petitioner to undergo cervical surgery on 12-19-07.

The records indicate that Petitioner underwent a cervical fusion at C5-6 and C6-7 on 5-21-02 with Dr. Amaral, Dr. Kattner's partner. Petitioner was not treated at Dr. Kattner's office after he was released by Dr. Amaral on 8-14-02 until 11-19-07, after his 8-20-07 work accident (PX 11, RX 3). Petitioner's testimony, and Dr. Benyamin's records, reflect that he had some ongoing cervical pain which Dr.

Benyamin had managed with botox injections in 2003 intermittently through 3-28-07 (PX 9, RX 14). Petitioner testified that he intended to continue with Botox treatments from Dr. Benyamin.

Petitioner testified that the injections improved his cervical pain and that he was able to perform his nursing duties for Respondent without difficulties until his 8-20-07 accident.

Petitioner subpoenaed a co-worker, Deb Garrells, an LPN who worked for Respondent at the time of Petitioner's work accident on 8-20-07, to testify at arbitration. Ms. Garrells testified that she had had the opportunity to observe Petitioner at work numerous times before his work accident. Ms. Garrells testified that doing nursing work for Respondent is physically demanding, but that Petitioner did not appear to experience any difficulties performing it. Ms. Garrells testified that after Petitioner's work accident, he had difficulty turning his head and he walked with a limp.

In a 4-9-08 report, Dr. Kattner, Petitioner's treating neurosurgeon, stated that Petitioner had a previous foraminal stenosis at C3-4 which was aggravated from the trauma of his 8-20-07 accident and that Petitioner underwent a posterior cervical foraminotomy on 12-19-07. Dr. Kattner stated that Petitioner developed neck pain which radiated down his left shoulder as a result of his lifting accident on 8-20-07 and that he needed a follow up MRI (PX 1).

Respondent's Section 12 doctor, Dr. Delheimer, examined Petitioner on 3-3-08 and authored two reports on 3-3-08 and 4-11-08 (PX 15, 16, RX 21). In his 3-3-08 report, Dr. Delheimer opined that Petitioner had significant pre-existing cervical degeneration and that he sustained a soft tissue injury to his cervical spine as a result of his 8-20-07 accident (PX 15). In his 4-11-08 report, Dr. Delheimer opined that Petitioner did not have a cervical injury as a result of his 8-20-07 accident and that he had extensive treatment to his neck prior to his work accident (PX 16, RX 21). During his 6-18-08 deposition, Dr. Delheimer confirmed that he changed his 3-3-08 opinion based on new information he received and opined that Petitioner did not sustain a cervical injury as a result of his 8-20-07 accident, but that he did have a lumbar strain from it (RX 22, p.p. 16-18).

The Arbitrator relies on the records, Petitioner's testimony, and Dr. Kattner's opinion and finds that Petitioner aggravated a pre-existing cervical condition which required surgery on 12-19-07, as a result of his 8-20-07 accident. The Arbitrator finds that the work accident contributed to Petitioner's current cervical pain with radiating pain into his left shoulder. The Arbitrator further finds that Petitioner

aggravated his SI joint, his pre-existing arthritis in his left knee and that he aggravated a degenerative condition in his lumbar spine as a result of his work accident. The Arbitrator finds that the accident caused or contributed to Petitioner's current condition temporary total disability. The Arbitrator specifically wishes to stress that although Petitioner had varying degrees of degenerative conditions ongoing in the body parts that are the subject of this claim at the time of the accident alleged herein, he was in fact working full duty at a job that required heavy lifting and was able to do said job. Further, it does not appear from the voluminous medical record introduced by both Respondent and Petitioner that as of the date of accident, any medical provider had recommended any of the surgeries that Petitioner subsequently underwent. It is clear from the records that Petitioner had a full duty medical release on the date he was injured and that nothing in those records indicates that the release was conditional or temporary. The only area in which the issue of a conditional work status arises is with regards to Petitioner's social security disability status, and it is clear that at the time he was injured Petitioner was participating in a Social Security Administration program that allowed Petitioner to return to work for a trial period of 9 months before being permanently terminated from the SSDI program. This had no effect on his work status at the time of his accident as alleged herein.

J. WHAT MEDICAL BILLS ARE CAUSALLY RELATED TO THE INJURY?

For reasons stated in (F) Causal Connection, above, Respondent is ordered to pay the following reasonable and necessary medical expenses under the Fee Schedule:

Millennium Pain Center	$5008.82; $8157.00
McLean County Orthopedics	$1666.72
Clinton Internal Medicine (Dr. Williams)	$255.90
Central Illinois Neurohealth Sciences	$423.00
Diagnostic Neuro Technology	$2797.43
BroMenn	$17,197.81
Anesthesia Consultants	$2625.13
RX Third Party	$800.06
Bloomington Radiology	$441.23
John Warner Hospital	$5330.69
Total:	$44,703.79.

In addition, Respondent is ordered to re-pay Medicare in the amount of $3,655.26 and to reimburse Petitioner in the amount of $111.08.

K. WHAT TEMPORARY TOTAL DISABILITY BENEFITS ARE DUE PETITIONER?

The parties stipulated that Petitioner became temporarily disabled on 8-23-07. The Arbitrator finds that Petitioner remained temporarily disabled through the date of arbitration on 9-11-08 and that he had not reached MMI for either his cervical or left knee condition (PX 8).

Dr. Bratberg treated Petitioner on 7-30-08 and kept Petitioner off work (off work slip 7-30-08, PX 22).

In his 4-9-08 report, Dr. Kattner recommended an MRI for Petitioner. Petitioner testified that he has not been able to schedule the MRI because of insurance issues. Petitioner has been undergoing physical therapy through Dr. Kattner's orders at John Warner with the last appointment on 9-2-08 (PX 20).

The Arbitrator reviewed the surveillance videos and reports on Petitioner and does not find them inconsistent with a finding that Petitioner is temporarily disabled (RX 1, RX 27).

The Arbitrator therefore finds that Petitioner has been temporarily disabled from 8-23-07 through 9-11-08. Petitioner is not barred from further proceedings on TTD, medical and for permanency.

M. IS PETITIONER ENTITLED TO PENALTIES?

Petitioner has remained temporarily disabled from 8-23-07 through 9-11-08, or 54 5/7 weeks. At Petitioner's TTD rate of $604.29, this amounts to $33,063.29. Respondent has paid TTD and permanency advances in the amount of $11,136.31, or approximately 18 3/7 weeks of TTD benefits.

The Arbitrator finds that Respondent's reliance on its independent medical examiner's opinions is neither vexatious or unreasonable under the terms of the Workers' Compensation Act. The Arbitrator therefore denies Penalties and attorney fees in this case.